

BEFORE THE
ILLINOIS COMMERCE COMMISSION

Springfield, Illinois
July 19, 2001

BEFORE :

APPEARANCES :

(Appearing on behalf of Ameritech
Illinois)

(Appearing on behalf of Ameritech
Illinois)

| | | | | |
|----|-------------------------|--------|--------|-------------------|
| 1 | I N D E X | | | |
| 2 | WITNESSES | DIRECT | CROSS | REDIRECT RECR OSS |
| 3 | CHRISTOPHER J. BOYER | | | |
| | By Mr. Livingston | 848 | | 1171/1211 |
| 4 | By Mr. Bowen | | 870 | |
| | By Ms. Franco-Feinberg | | 1154 | 1176/1215 |
| 5 | By Mr. Schiffman | | 1207 | 1214 |
| 6 | | | | |
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| 10 | | | | |
| 11 | | | | |
| 12 | EXHIBITS | | MARKED | ADMITTED |
| 13 | Ameritech 4.0 & 4.1 | | 852 | 1036 |
| | Rhythms Rehearing Boyer | | | |
| 14 | Cross 1 | | 1105 | 11 75 |
| | Rhythms Rehearing Boyer | | | |
| 15 | Cross 2P | | 1125 | 1175 |
| | Rhythms Rehearing Boyer | | | |
| 16 | Cross 3P | | 1125 | 1175 |
| | Rhythms Rehearing Boyer | | | |
| 17 | Cross 4P | | 1125 | 1175 |
| | Rhythms Rehearing Boyer | | | |
| 18 | Cross 5P | | 1143 | 1175 |
| | Rhythms Rehearing Boyer | | | |
| 19 | Cross 6P | | 1146 | 1175 |
| | Covad Rehearing Boyer | | | |
| 20 | Cross 1P | | 1155 | 1171 |
| 21 | | | | |
| 22 | | | | |

1 PROCEEDINGS

2 JUDGE WOODS: We'll go on the record at this
3 time.

4 This is Docket Number 00-0393, Illinois
5 Bell Telephone Company, a proposed implementation
6 of high frequency portion of the loop/line sharing
7 service. This cause is before the Commission on
8 rehearing.

9 We have had two days of hearings so far.
10 We have all counsel present who were present at the
11 previous two days appearing, so I'll instruct the
12 Court Reporter to show those appearances given as
13 if given orally.

14 (Whereupon the appearances
15 of the parties as given on
16 7/17/01 are incorporated
17 into the record as
18 follows:)

19 MR. BINNIG: Theodore A. Livingston, Christian
20 F. Binnig, and J. Tyson Covey of the law firm of
21 Mayer, Brown & Platt, 190 South La Salle Street,
22 Chicago, Illinois 60603, appearing on behalf of

1 Ameritech Illinois.

2 MS. HERTEL: Appearing on behalf of Ameritech
3 Illinois, Nancy J. Hertel, H-E-R-T-E-L, 225 West
4 Randolph, 25D, Chicago, 60606.

5 MS. FRANCO-FEINBERG: On behalf of Covad
6 Communications Company, Felicia Franco-Feinberg,
7 227 West Monroe, 20th Floor, Chicago, Illinois
8 60606.

9 MR. SCHIFMAN: On behalf of Sprint
10 Communications, L.P., Ken Schifman, 8140 Ward
11 Parkway, Kansas City, Missouri 64114.

12 MR. BOWEN: Appearing for Rhythms Links, Inc.,
13 Stephen P. Bowen and Anita Taff-Rice, Blumenfeld &
14 Cohen, 4 Embarcadero Center, Suite 1170, San
15 Francisco, 94111.

16 MR. TOWNSLEY: Appearing on behalf of
17 WorldCom, Incorporated, Darrell Townsley, 205 North
18 Michigan Avenue, 11th Floor, Chicago, Illinois
19 60601.

20 MR. DUNN: On behalf of AT&T Communications of
21 Illinois, Inc., John Dunn, 222 West Adams, Suite
22 1500, Chicago, Illinois 60606.

1 MS. MANN-STADT: On behalf of Alcatel USA,
2 Inc., Rendi Mann-Stadt of the firm Hinshaw &
3 Culbertson, 400 South 9th Street, Springfield
4 62701.

5 MR. HARVEY: For the Staff of the Illinois
6 Commerce Commission, Matthew L. Harvey and Sean R.
7 Brady, 160 North La Salle Street, Suite C-800,
8 Chicago, Illinois 60601-3104.

9 JUDGE WOODS: In addition, I understand we
10 have at least one new attorney here. Mr. Covey,
11 would you enter your appearance at this time,
12 please.

13 MR. COVEY: On behalf of Ameritech Illinois,
14 Ty Covey, Mayer, Brown & Platt, 190 South La Salle
15 Street, Chicago, Illinois 60603.

16 JUDGE WOODS: Okay. Any additional
17 appearances? Let the record reflect no response.

18 I'm not sure if the witness who's
19 currently in the dock was sworn during the mass
20 swearing in or not. Were you previously sworn,
21 sir?

22 MR. BOYER: Yes, I was.

1 JUDGE WOODS: Okay. You may proceed.

2 MR. LIVINGSTON: Thank you, Your Honor.

3 MR. BOWEN: Your Honor, before we go into the
4 cross, could I address a couple of procedural
5 matters?

6 JUDGE WOODS: Okay.

7 MR. BOWEN: Yesterday I just wasn't sure in
8 the rush to finish whether you actually admitted
9 the exhibits I had moved.

10 JUDGE WOODS: They were all admitted, yes.

11 MR. BOWEN: Okay.

12 Secondly, we had reserved for this
13 morning our motion to declassify the e-mail which I
14 believe is exhibit Rhythms Rehearing Ransom Cross
15 Exhibit 15P.

16 JUDGE WOODS: Yes.

17 MR. BOWEN: As I said, it simply is completely
18 inappropriate to classify that document in any way
19 because it was sent addressed e-name Steve Bowen,
20 who happens to be me. I would point out
21 Mr. Shiells asked if I had identified myself as a
22 lawyer to Mr. Maddock, the sender. I send

1 Mr. Maddock no e-mail whatsoever. In fact, the
2 e-mail was from Mr. Maddock in May of this year
3 before we asked any interrogatories at all, so I
4 have no idea why Mr. Maddock continued to send
5 e-mail to me, but I certainly didn't solicit any
6 information from him. So there's simply no reason
7 to leave that particular document as a proprietary
8 exhibit.

9 JUDGE WOODS: Was the argument waiver?

10 MR. BOWEN: Yes.

11 JUDGE WOODS: I think the law is pretty clear
12 that waiver has to be knowing, and so I do not find
13 waiver in this particular instance. I'm not really
14 sure -- I don't have it in front of me, but maybe
15 if someone could explain to me what the
16 confidential nature of the communication is, I'm
17 not -- just reading it yesterday, I couldn't tell
18 what it was and why it was confidential, frankly.

19 MR. BOWEN: I can address what the contents
20 were, Your Honor.

21 JUDGE WOODS: Okay.

22 MR. BOWEN: This was a communication from an

1 Alcatel employee to a distro --

2 JUDGE WOODS: To a what?

3 MR. BOWEN: To a distribution list which
4 except for me was SBC employees, and the content
5 was that it reflected the agreement at a meeting
6 held the previous Friday I believe between Alcatel
7 and SBC at which agreement was reached on how many
8 permanent virtual paths, total and per chain, total
9 per channel bank assembly and per chain would be
10 available in Release 11 of Alcatel's system
11 software. That is, there is a number, a maximum
12 number of PVPs per channel bank assembly and a
13 maximum amount per chain.

14 JUDGE WOODS: And it's the number that's
15 confidential?

16 MR. BOWEN: I don't know what the basis for
17 the claim is, but it seems to me that if they're
18 telling the world that Release 11 is going to be in
19 testing in August, that the number of PVPs should
20 be publicly available.

21 MR. LIVINGSTON: This is an Alcatel document.

22 JUDGE WOODS: I know.

1 MR. LIVINGSTON: I feel uncomfortable
2 addressing it. I know Alcatel's counsel is going
3 to be back. Could we maybe defer argument and
4 decision on this until she's here?

5 JUDGE WOODS: She will be here?

6 MR. LIVINGSTON: Yes.

7 MS. HERTEL: I'm not sure exactly when, but
8 she said she was going to be reappearing at some
9 point.

10 JUDGE WOODS: We'll take it up then.

11 MR. LIVINGSTON: Okay.

12 MR. BOWEN: The other housekeeping matter is
13 I'd like to get a status from Ameritech on their
14 production of the missing minutes and e-mails and
15 agendas for the multiple meetings between Alcatel
16 and SBC.

17 MS. HERTEL: We are continuing to search, and
18 we will have a report later today.

19 JUDGE WOODS: Okay.

20 MR. BOWEN: Since they have not been produced
21 yet, we are, of course, reserving our right to
22 recall witnesses to address matters that might be

1 revealed by examination of those materials.

2 JUDGE WOODS: We'll see what happens when it
3 happens.

4 MR. BOWEN: Okay.

5 JUDGE WOODS: Mr. Livingston.

6 CHRISTOPHER J. BOYER
7 called as a witness on behalf of Ameritech
8 Illinois, having been first duly sworn, was
9 examined and testified as follows:

10 DIRECT EXAMINATION

11 BY MR. LIVINGSTON:

12 Q. Good morning, Mr. Boyer.

13 THE WITNESS:

14 A. Good morning.

15 Q. Could you please state your full name
16 for the record and spell your last name, sir?

17 A. Sure. My name is Christopher J. Boyer,
18 B-O-Y-E-R.

19 Q. Could you please state for the record
20 your business address?

21 A. It is Three Bell Plaza, Dallas, Texas
22 75202.

1 Q. And by whom are you employed and in what
2 position?

3 A. I'm employed by SBC Management Services,
4 L.P. My position is General Manager - Network
5 Regulatory.

6 Q. Have you submitted direct testimony and
7 rebuttal testimony in this matter?

8 A. Yes, I have.

9 Q. I'd like to direct your attention to
10 your direct testimony which we've marked as
11 Ameritech Illinois Exhibit 4.0. Does this consist
12 of 64 pages of questions and answers?

13 A. Yes, it does.

14 Q. And are there exhibits attached thereto?

15 A. Yes, there are.

16 Q. Could you describe the exhibits, please?

17 A. They are exhibits in support of the
18 information that's contained in my direct
19 testimony.

20 Q. Okay. Is your Schedule CJB -1 a document
21 that you prepared or that was prepared under your
22 direction and supervision?

1 A. Yes, it is.

2 Q. Same question with respect to Schedule

3 2?

4 A. Yes.

5 Q. Schedule 3?

6 A. Yes.

7 Q. Schedule 4?

8 A. Yes.

9 Q. Schedule 5?

10 A. Yes.

11 Q. Schedule 6?

12 A. Yes.

13 Q. That's it. Correct?

14 A. Correct.

15 Q. Was the direct testimony prepared under

16 your direction and supervision?

17 A. Yes, it was.

18 Q. Do you have any corrections or changes

19 you'd like to make to your direct testimony,

20 Ameritech Illinois 4.0?

21 A. No, I do not.

22 Q. If I were to ask you the questions that

1 appear in Ameritech 4.0 today, would your answers
2 be the same?

3 A. Yes, they would.

4 Q. Please direct your attention to your
5 rebuttal testimony which we have marked as Exhibit
6 4.1, Ameritech Illinois 4.1. Does this consist of
7 43 pages of questions and answers?

8 A. Yes, it does.

9 Q. And no exhibits. Correct?

10 A. No exhibits.

11 Q. Was this prepared under your direction
12 and supervision?

13 A. Yes, it was.

14 Q. Do you have any corrections or changes
15 you'd like to make to your rebuttal testimony?

16 A. Yes, I have several.

17 Q. Could you run through those in order,
18 starting from front to back? Could you state what
19 the first one is?

20 A. Sure. On page 3, line 8, the word
21 "something" should be changed to the word
22 "sometimes".

1 MR. BOWEN: What page?
2 A. Page 3, line 8.
3 JUDGE WOODS: Rebuttal?
4 A. Rebuttal.
5 MR. BOWEN: Rebuttal?
6 A. Rebuttal.
7 MR. BINNIG: Just rebuttal.
8 MR. BOWEN: That's not what I have.
9 MS. FRANCO-FEINBERG: I don't have that on
10 line 8. Maybe the pagination printing out --
11 A. It's my page 3, line 8.
12 JUDGE WOODS: Let's go off the record.
13 (Whereupon at this point in
14 the proceedings an
15 off-the-record discussion
16 transpired, during which
17 Ameritech Illinois Exhibits
18 4.0 and 4.1 were marked for
19 identification.)
20 JUDGE WOODS: We'll go back on the record.
21 During off-the-record discussions I
22 believe it was indicated that Mr. Boyer had

1 submitted a revised version of his rebuttal
2 testimony that does contain a number of changes.
3 My understanding is that that -- a copy of that
4 revised testimony with the changes has now been
5 distributed to all counsel. If there is no
6 objection, I would simply -- and we've had that
7 marked as his rebuttal testimony, so rather than go
8 through and burden the record with the described
9 changes, I would just ask everyone to agree that
10 they've received a copy and the copy that they have
11 received and has been marked will stand as his
12 rebuttal testimony.

13 MR. BOWEN: What number is that again?

14 MR. LIVINGSTON: 4.1.

15 MR. BOWEN: Okay. Thank you.

16 JUDGE WOODS: Okay.

17 MR. LIVINGSTON:

18 Q. Mr. Boyer, are there any additional
19 corrections or changes you'd like to make to your
20 rebuttal testimony, Exhibit 4.1?

21 A. Yes, there is one. On my version, page
22 29, which I guess would be the version that

1 everybody else has.

2 Q. And that would be the same as what we
3 just passed out. Correct?

4 A. Correct. The fourth line down where it
5 says the first three items, the word "three" should
6 be changed to "two".

7 Q. Is that it?

8 A. That's correct.

9 Q. No more corrections or changes.

10 A. No.

11 Q. If I were to ask you the questions that
12 appear in 4.1 today, would your answers as
13 corrected be the same?

14 A. Yes, they would.

15 MR. LIVINGSTON: Your Honor, late last Friday
16 Rhythms submitted supplemental reply testimony on
17 behalf of Danny Watson, and it's my understanding
18 that we were given leave to respond to that through
19 supplemental oral direct.

20 With respect to Mr. Watson's
21 supplemental reply testimony, we propose to respond
22 to it through supplemental oral direct with this

1 witness, Mr. Boyer, and with Mr. James Keown.

2 JUDGE WOODS: Okay.

3 MR. LIVINGSTON: There won't be overlap.

4 They'll address different points.

5 JUDGE WOODS: All right.

6 MR. LIVINGSTON: And I'd like to do that at
7 this time, if I could.

8 JUDGE WOODS: That will be fine.

9 MR. LIVINGSTON:

10 Q. Do you have a copy of Mr. Watson's
11 supplemental reply testimony dated July 13, 2001?

12 A. Yes, I do.

13 Q. Could you please direct your attention
14 to pages 6 and 7 of that testimony, and on those
15 pages Mr. Watson is generally addressing means by
16 which throughput capacity can be expanded, and he's
17 referring to the LiteSpan platform. Is that
18 correct?

19 A. Yes, it is.

20 Q. And he refers to and describes two means
21 on pages 6 and 7. Correct?

22 A. That is correct.

1 Q. And the first one he refers to as
2 "un-daisy chain". Do you see that?

3 A. Yes, I do.

4 Q. Are you familiar with what he's talking
5 about there?

6 A. Yes.

7 Q. It's also called breaking the chain?

8 A. That would be another way of putting it.

9 Q. Are there any drawbacks to that means of
10 expanding throughput capacity?

11 A. Yes. There would be -- I think there
12 would be at least two drawbacks, the first being
13 that, of course, you'd have to use additional fiber
14 to provide multiple signals to the different
15 channel banks, and you would also have to use
16 additional ports on the optical concentration
17 device in the office, so there would be a capacity
18 impact on the OCD device, which I've outlined in
19 detail in my direct testimony.

20 Q. Direct your attention to page 7,
21 Mr. Watson's footnote 8. I think this is a comment
22 that relates to his un-daisy chain discussion. Is

1 that right?

2 A. Appears to be.

3 Q. And he talks about each channel bank
4 assembly then needing separate fibers?

5 A. Yes, he does.

6 Q. So instead of one OC3c you'd have three
7 OC3cs?

8 A. If you had a configuration with three
9 channel banks, you would have to have three fibers
10 to each bank, so you would have three OC3cs.
11 That's true.

12 Q. Instead of one.

13 A. Instead of one.

14 Q. And what would be the impact on the OCD?

15 A. Well, whereas before you would have been
16 utilizing one port on the OCD for one OC3, you
17 would now have three, so you'd be utilizing three
18 ports on the OCD.

19 Q. And are there a limited number of ports
20 on the OCD?

21 A. Yes, there are.

22 Q. And so when you use them all up, you

1 have to buy another OCD?

2 A. That's true.

3 Q. And that costs money?

4 A. Yes.

5 Q. Direct your attention to page 7. The
6 second means that Mr. Watson talks about is
7 upgrading the LiteSpan 2000 to LiteSpan 2012. Are
8 you generally familiar with what he's talking about
9 there?

10 A. Generally, yes.

11 Q. Can that be done?

12 A. Not to my knowledge. The only way to do
13 something along those lines would be to physically
14 replace the entire LiteSpan 2000 system and put a
15 LiteSpan 2012 in its place.

16 Q. Okay. I'd like to direct your attention
17 now to page 15, and at the top of page 15 I think
18 this is a carry-over from his last bullet point at
19 the bottom of page 14. He's talking about limited
20 quality of service options. Do you see that?

21 A. Yes, I do.

22 Q. And he talks about a kilobits per second

1 limitation on CBR. Is that right?

2 A. Yes, he does.

3 Q. And you're familiar with that kilobits
4 limitation?

5 A. Intimately.

6 Q. And he states that that limitation is
7 there for SBC's "own retail business reasons", and
8 I'm quoting from lines 3 and 4. Do you see that?

9 A. Yes, I do. I think it's actually lines
10 5 and 6.

11 Q. Well, it's 3 and 4 on my copy.

12 A. Okay.

13 Q. In any event, you see the sentence that
14 reads: "SBC is doing so for its own retail business
15 reasons." Correct?

16 A. Yes, I do.

17 Q. Is that a correct statement?

18 A. No, it is not.

19 Q. Why is that kilobits per second
20 constraint on CBR in place?

21 A. We made the internal decision within the
22 telco to limit the CBR speed to 96 kilobits due to

1 the impacts it would have on the overall capacity
2 of the Project Pronto network. It wasn't a
3 decision that was made based upon any kind of
4 retail decision. It was simply because of the fact
5 that we felt like we could not support any higher
6 grade service over the platform without severely
7 degrading the other services that would be
8 provisioned over it.

9 Q. Has any CLEC to your knowledge asked SBC
10 to lift or expand the permissible kilobits per
11 second for the CBR service?

12 A. Yes, they have. I've had conversations
13 with several CLECs about the potential of offering
14 something greater than 96 kilobits, including
15 conversations with our own retail affiliate. To
16 date, we've not been willing to raise that rate for
17 anyone, including in response to requests from our
18 affiliate.

19 Q. Your affiliate asked you for more speed
20 and you said no?

21 A. We've had informal discussions and they
22 have asked for more speed, yes, and we have said

1 no.

2 Q. I'd like to direct your attention now,
3 last subject matter, to the Q and A that begins at
4 the middle of page 15 and runs over to the top of
5 16. It's a reference to Kansas documents. Do you
6 see that?

7 A. Yes, I do.

8 Q. And there's a reference in there to SBC
9 internal working groups or work groups charged with
10 deploying Project Pronto. Do you see that?

11 A. Yes, I do.

12 Q. Are you part of those work groups?

13 A. Yes, I am. I was in charge of the
14 development of all the product offerings over
15 Project Pronto for the last two years.

16 Q. From late 1999 on?

17 A. Yes.

18 Q. And he states, Mr. Watson that is, at
19 line 19 that you were planning to offer Project
20 Pronto as UNES.

21 A. He does.

22 Q. Is that a correct statement?

1 A. It is true that initially on the
2 development of the product offerings that we were
3 making available over the Project Pronto
4 architecture that we did refer to them as UNEs at
5 that time or as a UNE at that time.

6 Q. Was the product offering that you were
7 dealing with then, back in late '99 and early 2000,
8 different than the product offering that's on the
9 table today and known as the broadband service?

10 A. It's not substantially different. We
11 have made some enhancements to it. At the time we
12 did not offer constant bit rate and we also did not
13 offer what we refer to as the combined voice and
14 data version of the product, so we have added those
15 two enhancements to it, but substantially the way
16 the product works and the way it is offered is the
17 same with those two additions to it.

18 Q. And today you call it a broadband
19 service?

20 A. Yes, we do.

21 Q. Why did you change the label?

22 A. Primarily because when we first started

1 the project, to be blunt, the technology was
2 relatively new. We really didn't know what it was
3 in terms of whether it was a service or a UNE. Our
4 charge was to roll out a product offering to the
5 CLEC community that could be offered over the
6 architecture. We made the assumption that because
7 it was going to be a product offered to CLECs, the
8 local market segment, that it was a UNE. That's
9 how all of our other products or a majority of our
10 other products offered to CLECs were traditionally
11 referred to, and so that was the reason why we
12 stamped the name UNE on it. In retrospect, that
13 truly was not the right characterization of the
14 product at the time.

15 Q. Why did you change it, that is the
16 label?

17 A. Primarily because after we did some more
18 and further review of the product, we came to the
19 determination it truly was not a UNE as one would
20 normally -- normally refers to a UNE. It doesn't
21 consist of multiple piece parts or it's not broken
22 up. It's an integrated service offering end to

1 end, which would not normally be considered to be a
2 UNE from my perspective.

3 Q. Mr. Watson, oh, I think beginning at
4 lines 20 and 21 refers to two subloop UNEs. Do you
5 see that?

6 A. Yes, he does.

7 MR. BOWEN: Your Honor, I'm just going to --
8 they can certainly waive their confidential claims,
9 but this is in a section of Mr. Watson's testimony
10 that they -- that refers to documents they produced
11 under confidentiality claims, so I'm taking the
12 questions now to be a waiver of the claims on that
13 document. We intend to use that in the public
14 record from now on.

15 JUDGE WOODS: Mr. Livingston, have we done it
16 again?

17 MR. LIVINGSTON: No, I don't think so. I
18 don't know what document this is or documents, so I
19 don't know how I could be making a knowing waiver
20 since this is the specific area where I asked them
21 to identify the specific document or documents that
22 he is purporting to characterize, and I've received

1 no response to that, so.

2 MR. BOWEN: Well, Your Honor, we --

3 MR. LIVINGSTON: I couldn't be making a
4 knowing waiver, plus what I'm talking about here is
5 something that we've talked about in the public
6 record; the fact that this was referred to as a UNE
7 offering at the outset and it's offered -- it's
8 referred to now as a broadband service offering.
9 That's on the public record. I'm not waiving any
10 other contents -- confidentiality as to any other
11 contents of the document, and there's also been
12 talk on the public record of subloop UNEs. There
13 was a lot of discussion, if you recall, between
14 Mr. Bowen and Mr. Ireland about putting the card in
15 the slot and getting access to a subloop UNE that
16 runs from the card slot out to the prem and from
17 the card slot into the CO. Those are on the public
18 record. If there's any kind of waiver, it's as to
19 only that piece of information.

20 JUDGE WOODS: Okay.

21 MR. BOWEN: Well, Your Honor, we take our --

22 JUDGE WOODS: We'll see what the document says

1 when we get to it.

2 MR. BOWEN: That's fine, but we take our
3 obligation seriously, and even though we didn't
4 cite a document, this is referring to documents
5 that were produced under the agreement, so I don't
6 know if Mr. Livingston is suggesting that we don't
7 need to -- if we don't sign the document we can
8 simply characterize it without putting
9 confidentiality in our testimony or what because,
10 again, this is referring to a document that was
11 produced under the agreement.

12 MR. LIVINGSTON: In his questions to
13 Mr. Ireland Mr. Bowen said these exact same things.
14 I'm assuming that if he thought they were
15 confidential, he would have put them in the
16 confidential record.

17 JUDGE WOODS: Okay.

18 MR. LIVINGSTON: Because I do believe he does
19 take his responsibility serious.

20 JUDGE WOODS: We'll take a look at the
21 document when it comes up.

22 MR. LIVINGSTON:

1 Q. Do you see where he refers to two
2 subloop UNEs?

3 A. Yes, I do.

4 Q. Did you ever consider in your work
5 groups offering the Project Pronto architecture or
6 product as piece parts?

7 A. We never discussed in any of the work
8 groups that we had offering the product as
9 individual piece parts. We did talk about it as an
10 integrated offering. We did have some uncertainty
11 at the time in relation to who would own the line
12 cards, but we never referred to the product as
13 being offered as an individual, stand-alone
14 element. We always talked about an integrated
15 service, and it is true that when we do talk about
16 the product, we do segment the product into various
17 components. We do talk about a copper facility
18 component from the RT to the customer. We do talk
19 about a PVC component from the RT back to the
20 central office. However, we never intended to
21 offer any of those components as individual
22 elements. Our intention was always to offer them

1 as an integrated offering.

2 The only reason that we refer to them as
3 multiple components in the product even today is
4 because we offer several different versions of each
5 of those sections, so therefore that allows us to
6 have some flexibility in the product. We offer
7 three versions of a subloop, three versions of a
8 PVC, so therefore any party that purchases the
9 product has some flexibility in how they use it, so
10 it was always an integrated offering.

11 Q. Mr. Watson identifies what he meant by
12 these two subloop UNEs as one running basically
13 from the ADLU card slot to the OCD and another
14 running from that card slot to the customer's
15 premises. Do you see that?

16 A. Yes, I do.

17 Q. Do you agree that those are subloop
18 UNEs?

19 A. No, I do not. In my opinion, the
20 portion of Project Pronto from the RT to the OCD is
21 packet switched. Therefore it would not consist of
22 a subloop as one would normally discuss a subloop,

1 so I do not believe that that's a UNE subloop.

2 In terms of from the RT out to the
3 customer site, in my opinion, that's technically
4 not a subloop. We typically refer to subloops as
5 being available at the first point of access which
6 generally does not exist at an RT site. It could
7 be possible in some instances where there was an
8 access point in an RT site where there may be a
9 subloop there, but generally speaking the first
10 point of access would be at a serving area
11 interface, or possibly if someone built an ECS,
12 there may be an access point there as well, but I
13 would disagree that there is a subloop from the RT
14 out to the customer.

15 Q. You referred in your answer to an access
16 point. Right?

17 A. Yes.

18 Q. Could the card slot ever be an access
19 point?

20 A. Not in my opinion.

21 MR. LIVINGSTON: I tender the witness for
22 cross.

1 JUDGE WOODS: The witness is available for
2 cross.

3 MR. BOWEN: Thank you, Your Honor.

4 I think that the redirect may be even
5 longer than the -- if you typed it out may be even
6 longer than the section of the supplemental
7 testimony he's referring to.

8 CROSS EXAMINATION

9 BY MR. BOWEN:

10 Q. Let me ask you, Mr. Boyer, have you had
11 every opportunity you think you need to be able to
12 put your position fully on the record at this
13 point?

14 A. I believe so, yes.

15 Q. Anything else you want to say about
16 Mr. Watson's supplemental testimony? Here's your
17 chance.

18 A. No.

19 Q. That's it? You're done?

20 A. I don't have anything more to say.

21 Q. Okay. I don't want to cut you off
22 early.

1 A. No.

2 Q. Okay.

3 A. Mr. Keown may have something more to
4 say, but not me.

5 Q. Okay. All right.

6 Now am I right that you are the -- this
7 is your first testimony in this series of
8 proceedings?

9 A. First oral, yes.

10 Q. Pardon me?

11 A. First time I've testified, yes.

12 Q. Yes.

13 A. Other than the direct and rebuttal that
14 I filed.

15 Q. Yes.

16 A. Yes.

17 Q. Your prefiled testimony plus your
18 additional testimony just right now, this is your
19 first testimonial round. Is that right?

20 A. Yes, that's true.

21 Q. Are you aware that there have been
22 previous parts of this case and other cases that

1 have addressed the same issues?

2 A. I am.

3 Q. And give me, please, the extent of your
4 knowledge about that. How many different times has
5 the Commission addressed these issues in Illinois?

6 A. I believe that there was a Covad/Rhythms
7 arbitration at some point last year. I'm not sure
8 of the exact date; summer of last year possibly.
9 There was an award issued I believe it was in
10 August of 2000. Following that award, Ameritech
11 Illinois filed for rehearing in that case, and then
12 I believe that a rehearing was held in January
13 possibly. I don't remember the exact date again,
14 January of this year, so I would say that in that
15 particular -- for the arbitration there were two,
16 if you consider the original case and then the
17 rehearing, there were two, two cases, and then
18 there was also -- at the same time there was the
19 tariff proceeding which I'm not sure, again, of the
20 exact date, but I believe it was in the fall of
21 2000 the tariff proceeding started, and then there
22 was an award in the tariff proceeding, and then

1 subsequently I believe that we are on rehearing now
2 for that proceeding.

3 Q. Okay. And I'm trying to understand.
4 You're filing what looks like a complete
5 replacement, if you will, of one or more witnesses'
6 testimony in the tariff case below. That is, there
7 were witnesses like John Lube and Carol Chapman.
8 Is your testimony designed to replace those
9 testimonies?

10 A. No. I would disagree with the
11 characterization that it was designed to replace.
12 There are several points in there that I think that
13 are made additionally on top of what Mr. Lube or
14 Ms. Chapman may have testified to in the original
15 case. I've also gone through an extensive effort
16 to try to explain some of the issues in much more
17 detail than I think Mr. Lube and Ms. Chapman did,
18 so I certainly don't think that it's just a
19 replacement of what they testified to in the past.

20 Q. Well, you do start with something as
21 basic as what is DSL service, don't you?

22 A. Yes.

1 Q. Okay. I didn't mean to say that it was
2 one for one, but are you trying to say that you
3 took what they did, included it in yours, and
4 expanded it?

5 A. I would say that I basically wrote it
6 fresh from my knowledge of the issues. Some of the
7 stuff in here is probably things that were also
8 included in Mr. Lube's testimony. I was involved
9 in the writing of Mr. Lube's original testimony, so
10 I may have used portions of that and also flushed
11 out some of the issues in more detail. That's
12 certainly possible.

13 Q. Now you're not a lawyer, are you?

14 A. No, I'm not.

15 Q. Okay. As a nonlawyer, do you understand
16 it to be the case that the record in this tariff
17 case below is still part of the record in front of
18 the Commission for consideration?

19 A. I don't know.

20 Q. You don't know?

21 A. No.

22 Q. Let me ask you this. You said you're

1 not trying to supplant any witness below. Isn't
2 that what you said? This is separate from them.

3 A. I'm not trying to supplant or replace.

4 Q. Supplant their testimony from below. We
5 should consider this to be separate, additional
6 testimony. Is that your testimony?

7 A. Well, I was asked to prepare testimony
8 in support of this case, and that's what I did.

9 Q. Okay. Did you read Mr. Lube's testimony
10 or Ms. Chapman's testimony in any of the three
11 previous rounds at this?

12 A. I have read Mr. Lube's testimony in the
13 original case several months ago. I'm not -- I was
14 involved in the preparation and I have read it,
15 yes. It's been several months since I've looked at
16 it though.

17 Q. What about the other witnesses besides
18 Mr. Lube?

19 A. I read through Ms. Chapman's testimony
20 to some extent, not in detail. Basically I skimmed
21 it.

22 Q. Okay. All right. I'm asking. I just

1 don't want to replicate all of my cross of Mr. Lube
2 and others below. I'll just focus on your
3 testimony now then.

4 On page 1 you say that you're General
5 Manager of what you call Network Regulatory.
6 What's Network Regulatory?

7 A. Basically our responsibility is to
8 represent the network organization. It's to take
9 regulatory rulings in various proceedings,
10 interpret them, to meet with the internal network
11 organizations within SBC and ensure that they
12 implement the order. We also look at new
13 technologies and new things that will be rolled out
14 in the network and make a determination as to what
15 the regulatory impacts would be, what our
16 obligations are, what we would have to provide or
17 not have to provide in certain circumstances, so I
18 would say that we pretty much support -- we pretty
19 much deal with network as it relates to any
20 regulatory setting.

21 Q. Okay. And then you say your current
22 responsibilities include what you just talked

1 about; that is representing the planning,
2 engineering, and operations of SBC's networks, ILEC
3 networks.

4 A. Right.

5 Q. Is there anything else you do besides do
6 the regulatory stuff for them?

7 A. Yes. You know, I look -- I do look at
8 new -- I sit on several core teams that look at new
9 technologies to be rolled out in the network, and I
10 provide basically my opinion as to the technology,
11 what it could be used for, how we would deploy it,
12 several different things. I work intimately with
13 all of our engineering organizations on several
14 issues, so I'm not strictly a regulatory witness,
15 if that's what you're alluding to.

16 Q. You provide technical advice on network
17 deployment to the company?

18 A. At times, yes.

19 Q. Are you an engineer?

20 A. No, I'm not.

21 Q. You've got a Bachelor's of Science in
22 Business Administration, right?

1 A. That's true.

2 Q. And an MBA?

3 A. Yes, I do.

4 Q. Any engineering education whatsoever?

5 A. Well, I worked in the network
6 organization of SBC for several years, and I've
7 worked intimately with many engineers. I have
8 several engineers who work for me now, so I'm
9 pretty familiar. I've gone through company
10 training on various principles. I'm pretty
11 familiar with it.

12 Q. Are you licensed anyplace as an
13 engineer?

14 A. No, I'm not.

15 Q. You worked in customer service when you
16 joined the company, joined SWBT, right?

17 A. That's true, yes.

18 Q. How long did you work there?

19 A. I spent five years in what we call
20 special services which is basically special
21 services circuit provisioning, maintenance. I
22 hired on with Southwestern Bell Telephone Company

1 as a communications technician, worked hands-on on
2 the installation and repair and maintenance of
3 special services circuits, field, central office,
4 worked in the test center, worked with the special
5 services engineering organization. I basically did
6 that function for five years, and then I went to a
7 product management position following that.

8 Q. Okay. Well, you said you were working
9 in customer service. Is that special services
10 customer service or some other kind of customer
11 service?

12 A. Well, I worked in the special services
13 test center where we generally deal with
14 maintenance and repair and installation for special
15 service circuits for various providers.

16 Q. Okay. And when you say special
17 services, you mean private lines, right?

18 A. DSIs, private line service, yes.

19 Q. Point-to-point unswitched circuits,
20 right?

21 A. Yes.

22 Q. All right. Now, your local wholesale

1 product management responsibilities, is that a
2 marketing organization in SBC?

3 A. It is the organization that develops all
4 the new product offerings that we make available to
5 the CLECs and also to access carriers, interchange
6 carriers.

7 Q. And is that a marketing function?

8 A. Yes.

9 Q. Okay.

10 You say on lines 10 through 11 that in
11 your previous product management position, you were
12 responsible for the development of the SBC
13 broadband service offering. Do you see that?

14 A. Uh-huh.

15 Q. Were you also responsible for the
16 Project Pronto UNE offering?

17 A. Given that the broadband service was
18 called a UNE at the time --

19 JUDGE WOODS: Whoa, whoa, whoa, whoa, whoa.
20 That's way too fast.

21 A. I was saying that given that the
22 broadband service at the time was called a UNE, I

1 would have been involved in that, yes.

2 Q. Well, were you responsible for that?

3 A. At the time I was told to develop the
4 products that we were going to offer over Project
5 Pronto, so they told me here's Project Pronto,
6 develop the products for the community, so, yes, I
7 was responsible for all of that, yes.

8 Q. Okay. So just as you were responsible
9 for the wholesale broadband service offering,
10 you're now advocating you were responsible to the
11 same degree for the Project Pronto UNE offerings.
12 Isn't that fair?

13 A. No. What I said was that at the time,
14 insomuch as we referred to the broadband service as
15 a UNE, given that it's the same offering
16 essentially today as it was at the time, I was
17 responsible for it then and I continue to be
18 responsible for it through throughout the year
19 2000.

20 Q. Okay. Well, who is it, if it's not you,
21 that named it a UNE?

22 A. It was my team that named it a UNE at

1 the time, named it the service that we refer to
2 today as a UNE, yes.

3 Q. And your team -- you referred to a core
4 team, did you not? Not in your written testimony,
5 in your answer.

6 A. Oh, yes. Yes, I did.

7 Q. That's a common way that SBC uses to
8 develop new products, isn't it? A core team?

9 A. Typically we would put together a team
10 of individuals from multiple organizations to work
11 on the development of a product.

12 Q. But core team as a concept is not unique
13 to the wholesale broadband service, is it?

14 A. No. There's core teams working on
15 products throughout the company.

16 Q. Okay. And am I correct that what a core
17 team does is to assemble one or more
18 representatives from each of the functional work
19 groups that the company deems are required to roll
20 out a product?

21 A. Generally, yes, I would agree with that.

22 Q. And the core team leader -- you were the

1 core team leader, right?

2 A. I was the -- well, it depends on which
3 -- there were multiple core teams, but for the
4 product team I was the product manager, so I was
5 leading that particular team.

6 Q. I'm talking about the Project Pronto UNE
7 line sharing core team on Pronto.

8 A. Well, that, again, --

9 Q. Is that you?

10 A. Well, it depends. I don't know which
11 team you're referring to because there were
12 multiple teams working on the product. I mean
13 there were several disciplines involved, so if you
14 have a specific team in mind, you know, I can --

15 Q. Yes. I have in mind the Project Pronto
16 core team. There's only one of those, right?

17 A. No. I wouldn't -- well, it depends,
18 again. I mean Project Pronto is a \$6 billion
19 project, so there are a lot of people. There's
20 thousands of people in SBC working on Project
21 Pronto, so I can't say which particular team you're
22 referring to. If you're referring to the team that

1 developed the product that's now called today the
2 broadband service, which at the time, as I've
3 stated before, was called a broadband UNE, I was
4 facilitating that team, yes. I had several
5 meetings with many people that worked on that
6 project that I facilitated the meetings, hosted the
7 meetings, and led that team in the direction that
8 we were going.

9 Q. Okay. Let me ask it this way. You are
10 agreeing that there was a single core team that
11 eventually rolled out the wholesale broadband
12 service, are you not?

13 A. Yes. There was a core team.

14 Q. It wasn't a bunch of them. There was
15 one.

16 A. There was one for that particular issue.

17 Q. Right.

18 A. But there were multiple -- there was
19 more than one issue going on with Project Pronto.
20 I think as you know, Mr. Keown, who is the room,
21 has worked on the deployment team.

22 Q. We'll get to him.

1 A. So like there was not one team.

2 Q. Okay. All right. Well, the team that
3 -- the single team that you're talking about that
4 you were the team leader of that rolled out the
5 wholesale broadband service, take yourself back in
6 time when you were thinking about it as UNEs. Was
7 that the same people? Same team?

8 A. Well, I would -- other than the fact
9 that I would disagree with your characterization
10 that we were going to offer it as UNEs, as in
11 plural. We called it an end to end broadband UNE.
12 Yes, it would essentially be the same team with
13 some turnover.

14 Q. Sure. Okay. So when was this core team
15 formed?

16 A. Probably December of '99, early January
17 2000 time frame.

18 Q. Okay. A few months after the company
19 announced Project Pronto to the world, right?

20 A. Yes.

21 Q. Okay. And there wasn't any period I
22 take it early on prior to when you talked about

1 Pronto as UNEs when you talked about it as a
2 wholesale broadband service. Is that correct?

3 A. Are you speaking of back in that time
4 frame?

5 Q. Yes.

6 A. December and January?

7 Q. If you think of when the core team
8 started and you began your discussions -- I'll put
9 it a different way. From the start of that core
10 team up until you changed your mind, you called it
11 a UNE. Isn't that right?

12 A. Yes, we called it the end to end service
13 today -- that exists today a UNE up until that
14 time.

15 Q. Okay. And I think you've testified
16 before and also in response to your counsel's live
17 direct or additional direct testimony that at some
18 point you decided you were wrong?

19 A. Basically, yes. We made -- like I said
20 before, when we were looking at the initial
21 deployment, my charge was to take an architecture
22 and develop a product for the CLEC community, and

1 we made the -- we stamped the label UNE on it at
2 the time. We had not looked at in detail the
3 regulatory implications of that, so at a later date
4 we went back and looked at it more thoroughly and
5 made the determination that it did not actually
6 meet what would be traditionally referred to as a
7 UNE.

8 Q. Okay. Since you are the team leader of
9 that team as it existed from the start, tell me the
10 precise point at which you and the team decided
11 that it wasn't a UNE after all; that it happened to
12 be something else that you called it a wholesale
13 broadband service?

14 A. Well, we made a determination probably
15 in late April of 2000 in conjunction with our legal
16 folks and also with several other folks higher up
17 in the company that the product itself was not
18 truly a UNE, and we changed it to a broadband
19 service. Again, it's substantially the same
20 product, so it was just a name change.

21 Q. When you say it's substantially the same
22 product, do I take that to mean that from a

1 technical configuration point there's no difference
2 between the wholesale broadband service and Project
3 Pronto as UNEs?

4 A. It would depend upon how you are
5 referring to Project Pronto as a UNE. If you were
6 referring to -- I mean are you asking is it
7 technically possible to offer --

8 Q. No, I'm not.

9 A. I'm not sure what you're asking me.

10 Q. I'll clarify the question so we can save
11 some time. You say -- I thought you said it was
12 the same thing whether you call it a wholesale
13 broadband service or a UNE. Didn't you say that?

14 A. I said that what we offer today it was
15 the same thing that we referred to as the broadband
16 UNE at the time, yes.

17 Q. Okay. Explain what you mean by the same
18 thing, please.

19 A. It's the same product. I mean it's
20 fundamentally the same product with the two
21 additions that I stated earlier, the addition of
22 the constant bit rate offering and the -- constant

1 bit rate and the combined voice and data product
2 version of it.

3 Q. When you say it's the same product, do
4 you mean it uses the same network components?

5 A. Substantially, yes.

6 Q. Well, why not exactly?

7 A. Well, the only difference -- it depends
8 on what point in time you're referring to because I
9 think -- it depends because there was some
10 uncertainty initially at the onset of the project
11 as to who would own the line card, so at some point
12 we made a determination that the line card was
13 going to remain as part of the ILEC, the telco, so
14 from that point forward it has been substantially
15 the same thing.

16 Q. Okay. Well, I sense that you're trying
17 to convey that there has always been some
18 uncertainty as to what to call this thing so you
19 just kind of chose UNEs as the starting point and
20 later thought about it some more and then called it
21 a service. Is that fair?

22 A. That would be a fair characterization.

1 Q. Okay. Well, then I should be able to
2 look back into your documents and see that
3 uncertainty reflected somehow, shouldn't I? For
4 example, you know about these so-called Marketing
5 Service Descriptions, don't you?

6 A. Sure. I've written several.

7 Q. You write those, don't you?

8 A. Yeah, I write them all the time.

9 Q. Okay. How many of those have been
10 written for the Project Pronto first UNEs then
11 wholesale broadband service? How many different
12 versions have been written?

13 A. Boy. I'm not sure now because I have
14 switched jobs, but I would say initially I know of
15 at least -- God, I can't remember the exact number.
16 I've written several drafts. I've gone through
17 several drafts.

18 Q. I've got more than a dozen with me.
19 Does that sound right to you?

20 A. That's definitely possible.

21 Q. Each with a different version number?

22 A. Each with a different version number,

1 somewhat different than the original version, yes.

2 Q. Okay. And these aren't little one or
3 two-page documents, right?

4 A. No, they're several pages.

5 Q. Thirty or forty?

6 A. Depending upon the circumstance, yeah.
7 Generally.

8 Q. Well, the ones I'm talking about, the
9 MSD for Project Pronto, the wholesale broadband
10 service, is 30 or 40 pages long, isn't it?

11 A. It has grown to that point, yes.

12 Q. Okay. So I should be able to look in
13 there and confirm what you just testified to under
14 oath that there was uncertainty within the company
15 about whether or not this thing was a UNE or a
16 service. Right?

17 A. I would say that -- I don't think you'll
18 see statements in the Marketing Service
19 Descriptions that say there was uncertainty. What
20 you'll probably see is that there was a draft of
21 the broadband service that was labeled at the time
22 the broadband UNE and probably did talk in detail

1 about the broadband UNE at the time, and then
2 there's probably drafts that as time has gone by
3 that reflect changes in what we do with the
4 product, and what I've testified to is that we
5 offer -- that the product is substantially the
6 same, meaning that the basic components that make
7 up the product are the same, with the additions
8 that I mentioned. However, any time you develop a
9 product, you go through numerous changes in terms
10 of processes, in terms of different things that are
11 going on, so those documents always evolve. I
12 can't think of any product in the company where
13 there was a Marketing Service Description and then
14 that was it.

15 Q. Well, Mr. Boyer, this is I take it no
16 trivial matter; that is, whether to call something
17 a UNE or a service is significant, isn't it?

18 A. Well, it depends how you're looking at
19 it I guess. I mean in a regulatory setting it
20 might be important. From, you know, from the
21 standpoint of if it's substantially the same
22 product, if there's no fundamental difference in

1 terms of how it's being offered, then from my view
2 it would be -- I was the product manager. I was
3 told to deliver a product. That's what we did.
4 What we named it from our view was not that
5 significant at the time.

6 Q. Well, isn't the company's whole showing
7 in this rehearing centered on the claim that if you
8 have to offer Pronto as UNEs, it's so bad that
9 you're going to shut down Project Pronto?

10 A. The matter that we're concerned about in
11 this rehearing is the fact that what was originally
12 decided in this case is substantially different
13 than what we were referring back in that Marketing
14 Service Description. Again, as I've stated, the
15 product at that time was always an integrated
16 offering. It did not consist of individual piece
17 parts which was what was ordered in the original
18 case, so there's a substantial difference between
19 what was referred to then and what is referred to
20 as UNEs now. So whether you call them UNEs or call
21 them services, regardless of what you call them, we
22 have substantial concerns with any -- with offering

1 any of the various piece parts that were originally
2 ordered in the case.

3 Q. All right. Well, do you have any
4 concerns beyond just what it happens to be named if
5 the Commission were to order you to offer what
6 looks like the wholesale broadband service, that is
7 an end to end premises to central office facility,
8 as a UNE?

9 A. Outside of the legal issues that would
10 be related to that, which I can't speak to, from a
11 technical perspective it would depend on how it was
12 ordered. If it consisted of what we're offering
13 today as the broadband service, if it was
14 substantially the same product with no change
15 technically, and it was labeled a UNE versus a
16 service, I can't think of any technical issues that
17 would be of concern for us, meaning that it was
18 still an ADSL service, it was still 96 kilobits
19 CBR. The various components that consist of the
20 broadband service today, if they were not changed,
21 I can't think of any technical problems. I think
22 our legal folks may have some issues with that, but

1 I can't think of any technical reasons.

2 Q. Well, you're the witness that's talking
3 about UNEs versus wholesale broadband service,
4 aren't you?

5 A. That's true.

6 Q. I don't want you to limit your answer
7 just to technical claims because you're not an
8 engineer anyway. I want you to tell me about the
9 company's total position on if the Commission
10 orders you to offer the wholesale broadband service
11 that you've offered as a service as a UNE instead,
12 are you okay with that on all grounds, technical
13 and whatever else is relevant?

14 MR. LIVINGSTON: I'm going to object to the
15 extent he's seeking to elicit a statement of the
16 company's legal position. He has already
17 established that he's not a lawyer.

18 JUDGE WOODS: And I have a little problem
19 asking him about ordering it to be provided as a
20 UNE because I don't think that term has ever been
21 defined. I think the Commission's order was as a
22 series of UNEs.

1 MR. BOWEN: I wanted to get to all of those,
2 but I wanted to just start with just the --

3 JUDGE WOODS: Right, but I don't think that's
4 a defined term, Mr. Bowen. I don't think we have a
5 defined term -- no one has ever defined what
6 Project Pronto as a single UNE is, so I just have a
7 little problem with -- I don't think it's a defined
8 term so I don't know how he can answer that
9 question.

10 MR. BOWEN: All right. Let me try and restate
11 then.

12 JUDGE WOODS: Okay.

13 MR. BOWEN:

14 Q. I want you to recall your testimony,
15 Mr. Boyer, that functionally the wholesale
16 broadband service is the same as what was formerly
17 called a UNE. Do you recall that?

18 A. I'm not certain if that's exactly what I
19 said, but I would agree that the broadband service
20 is essentially the same thing, yes.

21 Q. Okay. If the Commission orders that in
22 all of its glory, the wholesale broadband service

1 to be offered as a UNE instead of a service, does
2 the company agree with that?

3 MR. LIVINGSTON: I object.

4 Q. I want to separate that from the subloop
5 issue you identified. I'm trying to do this one
6 piece at a time. Is the company okay for all
7 purposes with that outcome?

8 MR. LIVINGSTON: I'm going to object to the
9 question. He said for all purposes, and it's
10 obvious from his prefatory comments that he's
11 seeking to elicit a statement as to the company's
12 legal position.

13 MR. BOWEN: That's exactly right, Your Honor.
14 I want this witness to testify under oath he is the
15 witness on whether or not this Commission properly
16 ordered UNes or not, and he should be qualified to
17 answer that question on behalf of the company.

18 JUDGE WOODS: Well, and I think you just
19 pointed out the problem I have with your question.

20 MR. BOWEN: Okay.

21 JUDGE WOODS: Because what you just stated in
22 argument was he should state his position as to

1 whether or not the Commission should order the
2 service to be provided as UNEs, not as a UNE. I
3 don't think anyone has ever defined Project Pronto
4 as an unbundled network element. It's been defined
5 either as a service, in which case it's integrated
6 end to end, or as a series of unbundled network
7 elements, that is the subloops, the line card, the
8 functionalities, the various functionalities that
9 are in the splitter, so I have a problem with your
10 question, and I don't think it can be answered. I
11 think this, for a change, is a trick question
12 because I don't think he can answer it.

13 MR. BOWEN: Well, I'll represent to Your Honor
14 that in our position in these cases we've always
15 said we wanted subloops, but we also said we
16 wanted, in effect, the whole loop from the OCD to
17 the premises riding on Pronto architecture. That
18 is we wanted a menu, which included not just
19 subloops, as you've described them, but also the
20 whole loop as a UNE as one of the options, and I'm
21 simply trying to inquire of the witness if he takes
22 this wholesale broadband service as a service and

1 thinks about it, that as one UNE, forget the
2 subloops altogether for now, are they okay with
3 that. That's what I'm trying to ask.

4 JUDGE WOODS: Well, then I think you need to
5 -- for my purposes and for purposes of the record
6 then I think you need to explain how that UNE would
7 be priced.

8 MR. BOWEN: I can do that too.

9 JUDGE WOODS: Okay.

10 MR. BOWEN: Okay.

11 Q. Mr. Boyer, I think you heard Judge
12 Woods' point he wants to get to. I want to get to
13 the pricing question in a second. I want to talk
14 about how it looks first. All right?

15 A. Sure.

16 Q. Okay. Now, I think you understand what
17 I'm after now, right? I'm looking for -- I want to
18 put aside subloops for now.

19 A. Okay.

20 Q. And just talk about a UNE that goes from
21 the premises to the central office hand-off point.
22 Okay? Line sharing on Project Pronto.

1 A. Basically the -- let me try and
2 understand.

3 Q. Okay.

4 A. What you're referring to is essentially
5 an integrated offering from the OCD to the customer
6 site.

7 Q. Yes.

8 A. Consisting of all the components that
9 will be within.

10 Q. Yes. What you are -- the integrated
11 offering you are now calling the wholesale
12 broadband service. Okay?

13 A. Okay. It's the same thing.

14 Q. Yes. Think of that as a UNE now instead
15 of a service.

16 A. Uh-huh.

17 Q. All right? No change in the way the
18 pieces are put together or the fact that they are
19 put together. Are you with me?

20 A. I'm with you.

21 Q. Okay. Does the company agree that that
22 should be offered as a UNE?

1 MR. LIVINGSTON: This witness is not a lawyer.
2 He's not here to state the company's legal
3 position. I object to Mr. Bowen's effort to get
4 this witness to state the company's legal position.

5 MR. BOWEN: Your Honor, this is not a question
6 of legal position. This is the ultimate fact that
7 this witness is testifying to in reverse. That is,
8 he is saying you should not uphold your order to
9 offer this platform as UNEs. You should instead
10 reject that and make only the wholesale broadband
11 service be the offering. If he can't testify in
12 answer to my question, he can't testify that the
13 Commission should change its order and offer it
14 only as a wholesale broadband service because that
15 is the same conclusion.

16 MR. LIVINGSTON: Your Honor, he has testified
17 as to technical reasons why he believes the
18 Commission should change its order. He has not
19 testified to the legal ramifications of potentially
20 different orders or a reinstatement of the prior
21 order. That's not within the scope of his
22 testimony or expertise.

1 MR. BOWEN: He spends a lot of time --

2 JUDGE WOODS: Give me just a second. Let me
3 review the testimony.

4 (Pause in the proceeding.)

5 JUDGE WOODS: Okay. On page 21 of his direct
6 testimony I think there are very specific
7 references to his interpretation of the FCC order
8 and the manner in which the FCC order addressed
9 packet switching and various other functions, and
10 while he does qualify his understanding as that of
11 a nonlawyer, which his testimony on the stand
12 obviously will be today, I think the question is
13 appropriate, and he can answer it.

14 MR. LIVINGSTON: Okay. I want to object to
15 the characterization of the end to end services and
16 end to end loop because it contains components that
17 aren't part of the loop under the FCC's rules. The
18 FCC's rules specifically exclude from the
19 definition of loop electronics used to provide
20 advanced services, and there are a lot of things
21 that fit that description in the architecture that
22 Mr. Bowen is referring to as a loop. So I want to

1 object to his mischaracterization of what those
2 components add up to.

3 I'll also state the company's position
4 on the matter has been stated by Mr. Ireland in
5 prior testimony already of record in this matter,
6 and he, of course, is the Chief Technical Officer
7 of the company and has stated the company's
8 position.

9 JUDGE WOODS: Okay. In terms of the entire
10 thing, I believe what Mr. Bowen is referring to is
11 the Commission's Order, subpart (f), any
12 combination of the various subloops that were
13 ordered, including the line shared xDSL loop from
14 the OCD port to the NID.

15 MR. BOWEN: Yes.

16 JUDGE WOODS: That's what I think we're
17 talking about being offered as a UNE. Mr. Bowen,
18 is that correct?

19 MR. BOWEN: In this set of questions, yes,
20 Your Honor.

21 JUDGE WOODS: We're talking about the line
22 shared xDSL loop from the OCD port to the NID, and

1 the question is does the company object to that
2 being offered as a UNE?

3 THE WITNESS: I would say that I can't speak
4 for the entire company as to whether there would be
5 any legal objections, as I've stated before. In my
6 opinion, again, I represent the product and
7 technical side, so I look at the issues that would
8 be -- that such an offering would create on our
9 ability to provision service and the impacts on our
10 network. So from my perspective, if you offered
11 substantially the same thing that's offered today
12 with no modification, meaning that it was still
13 limited to 96 kilobit CBR, that it was still
14 provisioned in exactly the same manner, with simply
15 the change of name from service to UNE, I cannot
16 think of any technical problems that SBC would have
17 with that particular scenario.

18 I do imagine that there are several
19 policy ramifications. I've probably gone through
20 them in detail in my testimony. As my counsel has
21 pointed out, we don't believe that packet switching
22 should be required to be unbundled in this case, so

1 from my perspective, because this potential loop,
2 if that's what we want to refer to it as, consists
3 of packet switching, I would argue that it would be
4 inappropriate from a policy perspective. I would
5 also argue that it's truly not a loop because of
6 the fact that my understanding as a nonlawyer of
7 the Remand Order is that DSLAM functionality and
8 advanced services or elements used in advanced
9 services are not considered to be attached
10 electronics to the loop. So I would disagree with
11 that characterization from a policy perspective.
12 From a technical perspective, they would be
13 essentially the same thing as long as it was
14 offered in the same manner, so I can't think of a
15 technical issue.

16 Q. Let me try and distill your answer and
17 see if I understand it correctly. You do testify
18 to policy issues, do you not?

19 A. I do.

20 Q. In both your direct and rebuttal
21 testimonies?

22 A. I'm sure I do.

1 Q. Okay. So your testimony is not limited
2 to what you characterize as technical issues, is
3 it?

4 A. It's predominantly technical issues, but
5 I do talk about some policy; that's true.

6 Q. All right. Well, I want you to consider
7 my question in light of the scope of your
8 testimony, which is both technical and policy.

9 A. Uh-huh.

10 Q. And I want you to tell me if this
11 Commission orders the end to end UNE we've just
12 been discussing, is that all right from your
13 perspective, from your SBC perspective?

14 MR. LIVINGSTON: That's been asked and
15 answered. He just gave a very full answer that
16 addressed the full panoply of considerations,
17 policy, legal, and technical.

18 MR. BOWEN: No. Your Honor, he gave an answer
19 that said I don't see a problem from a technical
20 standpoint, but there are these other policy
21 issues.

22 MR. LIVINGSTON: And he said it was

1 inappropriate from a policy standpoint because it
2 includes packet switching and packet switching
3 should not be unbundled. He said that.

4 JUDGE WOODS: That's what I heard him say.

5 MR. BOWEN: Okay.

6 Q. So then do I understand your answer to
7 be that SBC -- you would not recommend that SBC
8 agree to a UNE under those conditions?

9 A. I would not recommend that we agree to a
10 -- or that we offer an end to end UNE because of
11 the reasons I've stated previously.

12 Q. Okay. What is your understanding about
13 how a UNE would be priced, under whatever rules you
14 think are relevant?

15 A. My understanding is that UNEs are
16 traditionally priced using TELRIC-based pricing.

17 Q. Okay, and that would apply to the end to
18 end loop we've just been discussing. Is that
19 right?

20 MR. LIVINGSTON: Object to the
21 characterization that this is an end to end loop.

22 JUDGE WOODS: I think he knows what we're

1 talking about.

2 MR. BOWEN: I think he does too, Your Honor.

3 Thank you.

4 Q. Those rules would apply to what we've
5 just been discussing, wouldn't they, Mr. Boyer?

6 A. If you declared or there was an order
7 that we had to offer what is now the service as an
8 end to end loop, whether it's a loop or not,
9 outside of the -- outside, it would essentially --

10 Q. Careful.

11 A. I don't agree that it's a loop. Let's
12 put it that way, but taking that out of the
13 equation, if we offered what is now the broadband
14 service as an end to end loop, if that was ordered,
15 I would assume as a UNE it would be priced at
16 TELRIC, yes.

17 Q. Okay. And would that same TELRIC
18 pricing principle apply to any subloops the
19 Commission might order?

20 A. My understanding is that any UNE
21 typically uses TELRIC-based pricing, so if the
22 Commission ordered subloop UNEs, I assume it would

1 be TELRIC.

2 Q. Okay. And does the same apply in your
3 understanding to collocation, TELRIC pricing?

4 A. I am not familiar with collocation
5 pricing. I'm not intimately familiar with pricing
6 for those, so I don't know.

7 JUDGE WOODS: I didn't hear you.

8 A. I said I'm not familiar with collocation
9 pricing, so I don't know.

10 Q. Okay. So it sounds from what you're
11 saying is though that there really are significant
12 ramifications between calling something a UNE and a
13 service. Is that fair?

14 A. From a policy and from a pricing
15 perspective, I would say that there are significant
16 differences, yes.

17 Q. Okay. All right. Well, then let me
18 come back to my earlier line. If it's really
19 important that you think about something the right
20 way, that is as a UNE versus a service, I take it
21 that the core team would have understood that from
22 the start. Isn't that right?

1 A. Well, at the start -- let me make sure I
2 -- can you explain?

3 Q. Okay. Well, you've agreed with me just
4 now that the difference between UNEs and services
5 are significant. Right?

6 A. From a policy and pricing perspective,
7 yes, I would agree.

8 Q. And they have differential effects as
9 you've tried to quantify, along with Mr. Keown and
10 the rest of your team, you've tried to quantify the
11 differences attributable to being a service versus
12 a UNE in this case, haven't you?

13 A. I have.

14 Q. And didn't Mr. Keown say this is going
15 to be the end of life as we know it or \$500
16 million, whichever is higher?

17 MR. LIVINGSTON: I object to the
18 characterization. It's argumentative, colorful but
19 argumentative.

20 Q. Let's stick to the \$500 million. Isn't
21 that one of the dollar effects that is attached to
22 the Commission's decision to make this be available

1 as UNEs?

2 A. Well, it's a different situation. What
3 you're talking about is an end to end UNE that is
4 exactly the same thing as we already offer today,
5 that we already offer to CLECs. We already price
6 at TELRIC-based pricing --

7 Q. Well, now I'm not. I'm sorry. I don't
8 mean to cut you off, but now I'm talking about what
9 the Commission ordered, which is a series of UNEs,
10 not just one UNE but the whole series they order.
11 That collection of UNEs ordered by the Commission
12 is what has triggered all these calculations of a
13 whole lot of money coming from the fact that it's a
14 UNE versus a service. Isn't that fair?

15 A. I don't agree with that characterization
16 because what I've said and I've testified to is
17 that if it was offered as an end to end UNE --

18 JUDGE WOODS: Slower, slower.

19 A. I'm sorry. If it was offered as an end
20 to end UNE, it's the same thing as essentially
21 technically what we already offer. What the
22 original order established was multiple UNEs that

1 we would have to do several things in the network
2 to make available to, which is what drives the
3 cost, so it's not the same thing, so I don't quite
4 follow your question.

5 And I wouldn't agree with the statement
6 that it's a minuscule difference to say -- to go
7 from UNE to service because we're not talking about
8 the same thing. The last 15 minutes that we've
9 discussed has all been about if we relabeled what
10 is now the broadband service or if we developed an
11 end to end type of UNE, loop, if you want to call
12 it that, what the impact of that would be. What
13 you're talking about now is the order that would
14 cause us to break it up into multiple piece parts,
15 which there's a substantial difference.

16 Q. All right. Now, I'm going to guess that
17 Network Regulatory folks like yourself actually
18 read FCC orders. Is that fair?

19 A. Yes.

20 Q. That's part of -- the main part of your
21 job is to understand those and give advice based on
22 that understanding to your company. Isn't that

1 right?

2 A. Yes, it is.

3 Q. Are you aware that the FCC may have said
4 something about where and what kind of subloops on
5 a general matter we get access to?

6 A. I am aware of the subloop unbundling
7 rules at a general level, yes.

8 Q. Okay. Isn't one of those spots of
9 access to subloops the RT?

10 A. I believe that the FCC has defined
11 access to subloops at the first accessible point.
12 In some instances, as I've stated earlier, that
13 point could be in the RT if there's a place to get
14 physical access. That's not the case most of the
15 time with Pronto, but that could possibly happen.

16 Q. Don't they, in fact, mention explicitly
17 remote terminal locations as a possible point of
18 access?

19 A. I don't have a copy of the order in
20 front of me.

21 Q. You don't know that, Mr. Boyer, sitting
22 here today?

1 A. I don't have a copy of the order
2 verbatim. Can you point me to --

3 Q. That isn't what I asked you. Don't you
4 know for a fact, as a member of Network Regulatory,
5 that the FCC mentioned by name remote terminal
6 locations in the subloop unbundling order?

7 A. I've read thousands of pages of FCC
8 orders. I don't recall every single, specific
9 issue. What I do know is that the FCC defines
10 subloops as being accessible at the first
11 accessible point in the network, which may or may
12 not be in an RT site. So it's distinctly possible
13 that they did say RT in the order.

14 Q. But you don't recall it sitting here.

15 A. I don't remember. Like I said, the
16 document is what? I don't know how many hundreds
17 of pages, so I don't recall every specific detail
18 in that unbundling order, no.

19 Q. Okay. Well, let's assume that they did
20 say that in actual words.

21 MR. LIVINGSTON: Are you talking about the
22 actual regulations or the discussion in the order?

1 Q. Let's assume that in the discussion of
2 the order, Mr. Boyer, that you now have in front of
3 you, that the FCC mentions remote terminals by name
4 as a possible point of subloop access. Can you
5 just assume that with me since you don't know that?

6 A. Sure, I can assume that.

7 Q. Okay. All right. Do you know when that
8 order was issued?

9 A. The Remand Order? I don't know the
10 exact date. I believe it was in December of '99.

11 Q. Isn't it on the front of the document
12 you hold in your hand?

13 A. November 5th, '99.

14 Q. Okay. Thank you. Which was before the
15 core team was formed, right?

16 A. Yes.

17 Q. Okay. Well, shouldn't Network
18 Regulatory in specific and the company in general
19 have realized that it was possible that this
20 architecture would have to be unbundled in the
21 subloops, given that order that you hold in your
22 hand?

1 A. I can't speak for what the Network
2 Regulatory organization thought at the time. I
3 wasn't in that organization at that time.

4 Q. Well, I'm talking about now your job as
5 the leader of the core team. Okay?

6 A. Uh-huh.

7 Q. Had you read that order you have in your
8 hand prior to your assumption of your leadership
9 position in the core team?

10 A. No.

11 Q. Was there anybody from Network
12 Regulatory on the core team?

13 A. I don't believe so. At the time I don't
14 believe so.

15 Q. Anybody from legal?

16 A. I don't recall.

17 Q. Okay.

18 A. There were several people working on
19 Pronto. I would have to look at my core team
20 roster of folks at the time to make any -- to know
21 for sure who was and who was not considered on the
22 product team.

1 Q. Don't core teams always have a
2 representative, either legal or Network Regulatory
3 or both, Mr. Boyer?

4 A. No, I wouldn't say so. I would say that
5 a lot of our core teams we -- generally we would
6 have someone available we could get legal advice
7 from if we felt it was necessary.

8 Q. And there's always a core team roster,
9 isn't there?

10 A. Typically.

11 Q. Okay. Let me request on the record that
12 you give me the core team roster from the start of
13 the core team forward.

14 A. Okay.

15 Q. All right.

16 A. If I have it still. I'll try to find
17 it.

18 Q. It's still in somebody's e-mail I'm
19 sure.

20 A. There's a 100 people on the team, so,
21 yeah, I'm sure somebody has it.

22 Q. Okay. Good. Thank you.

1 All right. Well, I think we've agreed
2 that there's significant differences between the
3 service you propose and the UNEs the Commission
4 ordered.

5 A. I would agree with that, yes.

6 Q. Okay. So we should then expect to be
7 able to look back into the core team minutes or the
8 Marketing Service Description or whatever documents
9 were some version of the then current official
10 record of your core team and see maybe a footnote
11 or an asterisk or a little note saying, you know,
12 we aren't sure yet this is a UNE; we're working on
13 that; you know, Network Regulatory or legal or
14 whoever is working on that. We should see that,
15 shouldn't we, given the importance of the issue?

16 A. Maybe or maybe not. I don't know. I
17 mean I can tell you that, like I said, the core
18 team is a pretty large group. There's a lot of
19 documents going around. I don't know whether
20 there's a document there that states that or not.
21 At the time, like I said, we were moving forward
22 under the assumption that it was going to be an end

1 to end UNE. Whether you call it a loop or not, we
2 were working under that assumption from the OCD to
3 the customer site. So I don't know if there would
4 be any document from that particular team that says
5 anything differently.

6 Q. Okay. Well, how long has SBC been
7 working with UNes? Since say 1996?

8 A. I would presume since the Act.

9 Q. Okay. And so wouldn't it be fair to
10 conclude that SBC has developed over the course of
11 the past five years a pretty good working knowledge
12 of how UNes work and what they are?

13 A. I would assume so.

14 Q. Okay. Doesn't SBC also offer resale of
15 all of its services?

16 A. I wouldn't say all of SBC's services,
17 but we do offer resale of some of the ILEC provided
18 services that's required.

19 Q. That's what I mean. The ILEC services?

20 A. Yes.

21 Q. So you know what resale is like, too,
22 because you've done that since the Act was passed.

1 Right?

2 A. I would assume so, yes.

3 Q. And so for the past five years the
4 company somehow has been able to distinguish
5 between what should be a UNE and what should be a
6 resale service. Right?

7 A. One would imagine.

8 Q. Okay. And it has made that choice
9 routinely over the past five years, has it not?

10 A. Well, I mean typically we don't have
11 much of a choice. I mean typically UNEs are
12 defined by an order, so it's usually not our
13 decision whether something is going to be a UNE or
14 not, so I don't know if I would agree with the
15 statement that we had a choice. I mean typically
16 if we get an order, we implement the order, and the
17 order defines what the UNEs are or are not.

18 Q. Okay. And isn't it the case that as
19 your -- the FCC defined the loop as a UNE? That's
20 true, isn't it?

21 A. Yes.

22 Q. Okay. That whatever technology was used

1 to provision that loop, it didn't matter, did it?

2 I mean a loop UNE is a loop UNE, right?

3 A. Well, outside the issue I've stated
4 before about the attached electronics to a loop,
5 generally the loop is a loop.

6 Q. Okay.

7 A. If it goes from the MDF to the
8 customer's site, it's a loop, so typically it's
9 provisioned that way, yes.

10 Q. For example, if you think of a voice
11 grade loop with me, that can ride on all copper
12 facilities between the premises and the MDF, right?

13 A. It could.

14 Q. Okay. It can also ride on copper-fed
15 DLC facilities, in part, can it not?

16 A. A voice grade loop could, yes, if it was
17 configured in a universal type of configuration.

18 Q. Right. And the UNE obligation doesn't
19 really care which way it's rendered, does it?

20 A. I can't speak for, you know, all of the
21 obligations, but generally, generally if a CLEC
22 came to us and ordered an unbundled loop, we would

1 provision it. So whether it was over fiber-fed DLC
2 or whether it was over all copper facilities, we
3 would provision it that way.

4 Q. There's nothing magic about the fact
5 that you might choose to do it over fiber-fed
6 NGDLC, is there?

7 A. Other than with the qualification that
8 the only way we could do it is if it was in a
9 universal type of configuration. There's a lot of
10 fiber-fed DLC that's --

11 JUDGE WOODS: Let's take ten minutes.

12 (Whereupon a short recess
13 was taken.)

14 JUDGE WOODS: Back on the record.

15 MR. LIVINGSTON: Can I refresh his
16 recollection?

17 JUDGE WOODS: Yes.

18 MR. LIVINGSTON: He was talking about IDLC.

19 A. I think the question was essentially we
20 would provision a loop over whatever the
21 architecture was, and I think that's generally true
22 with the qualification of IDLC.

1 Q. Now, you're aware that when SBC bought
2 Ameritech that there were conditions attached to
3 that purchase, are you not?

4 A. I'm aware of them.

5 Q. Have you read those?

6 A. You're speaking of the SBC/Ameritech
7 merger conditions?

8 Q. Yes.

9 A. Yes.

10 Q. Okay. Can you think of anything sitting
11 there today in the merger conditions that might
12 have caused you and the core team to consider
13 Project Pronto to be a UNE and not a service?

14 A. I read the merger conditions a long time
15 ago, so I don't recall anything.

16 Q. You can't recall anything that you read,
17 whenever you read it, that might have been one of
18 the bases for the team to consider this to be a
19 UNE?

20 A. No, I can't think of anything.

21 Q. Did you consider that in, as you said,
22 in late April of last year when someone decided

1 this was going to be a wholesale broadband service
2 instead of a UNE?

3 A. Are you saying did we consider the
4 merger conditions?

5 Q. Right.

6 A. At that time?

7 Q. Yes.

8 A. I honestly don't know if we considered
9 the merger conditions. I would say that we
10 probably considered the Remand Order on the packet
11 switching obligations and the what is and what is
12 not a loop probably more heavily than the merger
13 conditions.

14 Q. Okay.

15 A. In making that determination.

16 Q. Well, was this determination made at one
17 or more of the core team meetings? Meaning
18 switching from UNEs to service.

19 A. I don't believe actually that the core
20 team -- depending upon which core team that we're
21 talking about .

22 Q. We're talking about --

1 A. The product core team, that decision was
2 not actually made, to my knowledge, by the product
3 core team itself.

4 Q. And when you say the product core team,
5 I hope you're discussing -- you refer to the core
6 team which we've been discussing; that is the one
7 that you were the core team leader of. Is that
8 right?

9 A. That's true. I was the leader of a team
10 that consisted of all the folks responsible for
11 making this product available.

12 Q. Okay. Well, if it wasn't the core team
13 that decided that, who was it?

14 A. I would assume it was multiple
15 individuals from various organizations throughout
16 the company.

17 Q. I don't want you to assume anything,
18 Mr. Boyer. I want you to tell us, if you know, who
19 decided that.

20 A. Do I know the name of an individual who
21 made that determination?

22 Q. A name or names, yes.

1 A. I don't know any name of who ultimately
2 made that decision, no.

3 Q. Okay. But I take it that -- given that
4 answer, that it was not the core team that did so.
5 Is that right?

6 A. No. That decision was relayed to me.

7 Q. Okay.

8 Mr. Boyer, did you also attend meetings
9 of what was known as a working group in late 19 99
10 that addressed Project Pronto issues?

11 A. I attended several meetings that may or
12 may not have. I don't know which specific meetings
13 you're referring to, but I attended several
14 meetings in regards to Project Pronto, so it's
15 certainly possible.

16 Q. Would you attend working group meetings
17 trying to decide how to implement the high
18 frequency portion of the loop? The FCC's Line
19 Sharing Order basically.

20 A. It's possible. It's part of my
21 responsibility. The organization that I was in was
22 responsible for implementing line sharing, which

1 would include the high frequency portion of the
2 loop and would also include the Project Pronto
3 piece, so yes, it's certainly possible I was there.

4 Q. Do you recall being there, in fact?

5 A. I recall being at several meetings in
6 late December or early January on these types of
7 issues. I don't know what specific meeting you're
8 talking about, so if you have a specific meeting in
9 mind, why don't you tell me.

10 Q. Do you recall being at meetings
11 discussing line sharing with Rhythms' witness
12 Mr. Watson?

13 A. Yeah. I was in a meeting with
14 Mr. Watson, and I think it was January, first week
15 of January, 2000, and we talked about how we were
16 going to potentially implement the provision of
17 service over Project Pronto. There were several
18 organizations, several folks there.

19 Q. Okay. Those were different though than
20 what you're characterizing as your core team, your
21 product core team, right?

22 A. Yes.

1 Q. Okay. All right.

2 Well, coming back to our discussion
3 point, if it wasn't the core team that decided and
4 you don't know who it was that decided to make it a
5 service instead of a UNE, how was the information
6 conveyed to you and the core team that you should
7 stop thinking about it as a UNE and you should
8 start thinking about it as a service?

9 A. I went on vacation and I came back and
10 my boss told me that the product was -- that we
11 were making a determination that the product was
12 better qualified as a service, and so we went
13 forward calling it a service.

14 Q. And who was your boss at the time?

15 A. Rod Cruz.

16 MR. LIVINGSTON: Could you spell that.

17 A. Cruz, C-R-U-Z.

18 Q. And did Mr. Cruz tell you the basis
19 under which that had been decided?

20 A. To be quite honest with you, I didn't
21 ask.

22 Q. All right. Was the core team asked to

1 provide any kind of input on that decision, service
2 versus UNE?

3 A. I was asked to provide input to multiple
4 folks within the company on multiple issues about
5 Project Pronto. I didn't --

6 Q. This is a very specific question,
7 Mr. Boyer. I don't want to know about everything
8 you did back then. I want to know whether you and
9 the core team were asked by anybody to provide
10 written input into a decision to make this a
11 service instead of a UNE.

12 A. Not at that time.

13 Q. Ever?

14 A. No.

15 Q. Was that core team ever asked for
16 written input on this decision?

17 A. Not that I can recall.

18 Q. And was it -- when you got back from
19 vacation and Mr. Cruz simply announced to you that
20 now it was a service instead of a UNE, was that the
21 late April you're talking about, late April of
22 2000?

1 A. It was in May -- it was on May 9, 2000.

2 Q. Okay.

3 A. Somewhere around that date.

4 Q. And did you ever ask Mr. Cruz or anybody
5 else more details about how that decision came to
6 be reached?

7 A. To be quite honest with you, at the
8 time, like I said before, my charge was to develop
9 the product offering. So if we changed the name
10 from UNE to service, I really didn't see that as --
11 at the time I didn't see that as -- I mean it might
12 be -- like I said before, it might be an issue from
13 a legal/policy perspective, but I didn't see any
14 significant impact on what I was in charge of doing
15 at the time.

16 Q. So at the time it made no real
17 difference to you whether you called it a service
18 or a UNE.

19 A. Like I said, from a technical
20 perspective, it makes no difference. I had a team
21 of people that were implementing technically how we
22 could offer the product. There was no change, so.

1 Q. All right.

2 Okay. Let's come back to your testimony
3 at the bottom of 2, top of 3 of your direct. At
4 the top of 3 you're talking about -- if you look
5 there with me at lines 1 through 4, you say you're
6 going to outline the architecture, outline your
7 wholesale broadband offering, discuss why it
8 shouldn't be unbundled, and address the technical
9 feasibility. Is that right?

10 A. Yes.

11 Q. All right. And you say -- in particular
12 you say you're going to address the technical
13 feasibility of the new UNEs proposed by the
14 Commission. Do you see that?

15 A. Yes, I do.

16 Q. Isn't that a typo, the word proposed?

17 A. That's what I wrote.

18 Q. Didn't the Commission order that to
19 happen?

20 A. That may be the case. If that's the
21 case, then maybe we should replace the word with
22 order.

1 Q. Okay. Well, does this reflect kind of
2 how you're thinking about it? That it's not final
3 until you guys say it's final?

4 A. No. My understanding is the case is up
5 for rehearing.

6 Q. Okay.

7 A. So if it's up for rehearing, does that
8 mean it's final or not?

9 Q. Okay. Well, how many times has the
10 Commission ordered Project Pronto to be offered as
11 UNEs between the tariff case and the arbitration
12 case?

13 A. My recollection is that the line sharing
14 -- the original arbitration case, the outcome was
15 that the Commission ordered Illinois Bell or
16 Ameritech Illinois to provide CLECs the ability to
17 collocate line cards in NGDLC, but I don't recall
18 if that order specifically broke Project Pronto up
19 into individual UNEs. I believe that in the
20 rehearing of that arbitration case the outcome was
21 essentially the same as what was ordered in the
22 line sharing tariff proceeding, so I guess I would

1 say that if the Commission ordered Project Pronto
2 to be unbundled into UNEs in the rehearing of the
3 arbitration and as part of the tariff proceeding,
4 that would be twice.

5 Q. Okay. So at this point you still view
6 the Commission's actions as being proposals?

7 A. If it's ordered, then it's been ordered.
8 I don't know what the relevance of that would be.

9 Q. Okay. Let's move ahead in your
10 testimony, and, again, you go back to basics in
11 terms of talking about what is the DSL and so
12 forth. I want to get to the point at page 5 of
13 your testimony and focus your attention on your
14 testimony at lines 23 through 26 and then spilling
15 to the next page. Do you see that?

16 A. Yes, I do.

17 Q. All right. Here you're talking about
18 the benefits that Pronto brings, one of which is
19 that you can serve customers on loops that are
20 longer than about 18,000 feet. Right?

21 A. Well, again, without the
22 characterization of a loop, typically you can get

1 to a customer that was originally greater than
2 18,000 feet away from a central office than you
3 otherwise would not be able to get to.

4 Q. Okay. And meaning that the copper
5 segment of the loop, if it's home run copper, the
6 whole loop is copper, correct?

7 A. Yes.

8 Q. And if it's fiber-fed DLC, then only the
9 section of the loop from the DLC to the customer
10 premises is copper. Right?

11 A. Correct.

12 Q. And so you need to put the DSLAM at the
13 end of the copper basically.

14 A. Essentially.

15 Q. Either in the central office for all
16 copper loops, right?

17 A. You need to put a DSLAM functionality
18 somewhere at the start of the copper basically.

19 Q. Okay.

20 A. Wherever that might be.

21 Q. And in fiber-fed DLC like Project
22 Pronto, that's at the RT, right?

1 A. If you want to consider the NGDLC to be
2 a DSLAM, if that's what you're implying, then, yes,
3 it would be at the RT.

4 Q. Well, --

5 A. Project Pronto.

6 Q. Just to be fair to your position, either
7 with a separate DSLAM at the RT that accesses the
8 copper or as part of the NGDLC functionality.
9 Isn't that fair?

10 A. I would agree that the NGDLC performs a
11 DSLAM functionality, so that would be your
12 alternative.

13 Q. Okay.

14 A. Or you could -- I will qualify that. I
15 mean you could conceivably put a DSLAM in some
16 other location in the field other than at an RT to
17 do the same thing.

18 Q. Okay. Now, am I correct that you can't
19 do -- I want to talk about why you can't do line
20 shared ADSL over 18,000 feet of copper. Okay?

21 A. Okay.

22 Q. Beyond that point isn't it correct that

1 all copper loops are loaded? They have load coils
2 on them?

3 A. Generally they would be loaded beyond 18
4 kilofeet.

5 Q. That is Ameritech Illinois loop plant
6 policy, is it not, to load voice grade loops beyond
7 18,000 feet?

8 A. Typically if you have a loop that was
9 greater than 18,000 feet, it would start to be
10 loaded at some point beyond there in order to
11 provide POTS service.

12 Q. At some point beyond 18,000 feet you
13 begin to load? Is that your testimony?

14 A. Well, I'm not going to say that it's --
15 generally you would load a loop that was 18,000
16 feet or greater.

17 Q. Okay. And you do that to maintain a
18 voice grade 8 DB loop, right?

19 A. Yes.

20 Q. That's why you put the load coils on
21 there, right?

22 A. That is correct.

1 Q. And isn't it also the case that load
2 coils prevent DSL from working?

3 A. That's generally true. You have to
4 remove the load coil in order to provide DSL
5 service over that facility.

6 Q. Okay. So you can de-load the loop or,
7 to use your terminology, you can condition the loop
8 by taking off the load coils for DSL, right?

9 A. True.

10 Q. But if you did that for a loop that's
11 longer than 18,000 feet, then the voice service
12 wouldn't work to standards. Isn't that right?

13 A. I guess that could be a conceivable
14 consequence.

15 Q. Pardon me?

16 A. I guess that could be a consequence.

17 Q. Wouldn't that be the consequence?

18 A. If it wasn't loaded and the signal
19 wasn't strong enough to get there, then I guess
20 that would be the consequence, yes.

21 Q. Okay. So then isn't it fair to say that
22 for line shared loops on all copper that 18,000

1 feet is the absolute limit of reach?

2 A. Well, I would qualify that by saying it
3 depends on where the DSLAM functionality was
4 located at. I mean it would be impossible to
5 provide DSL from a DSLAM in a central office over a
6 loop that was greater than 18,000 feet other than,
7 you know, IDSL, which I talked about, which is not
8 what we're really talking about here.

9 Q. I'm talking about line sharing here,
10 only line sharing. Okay? Are you saying it's
11 technically possible to provide DSL over all copper
12 loops that are beyond 18,000 feet in a line sharing
13 configuration?

14 A. All copper loops?

15 Q. Yeah.

16 A. I'm not sure if I quite understand that.
17 You're saying that if you have a loop from the
18 central office all the way out to the customer
19 site, all copper, that it would be not possible to
20 provide line sharing essentially. Is that the
21 question?

22 Q. Yeah.

1 A. I would disagree because you could put a
2 -- you could put equipment somewhere out there that
3 would allow you to do that.

4 Q. And where would that be?

5 A. Anywhere really in the loop. Anywhere
6 that made the loop essentially, the copper portion,
7 shorter than 18 kilofeet.

8 Q. Well, when you say you, do you mean a
9 CLEC?

10 A. I mean anybody.

11 Q. Okay. Well, let's talk about that. You
12 have a loop that's longer than 18,000 feet of
13 copper.

14 A. Okay.

15 Q. Isn't it correct, first of all, that
16 that will be loaded per Ameritech Illinois' outside
17 loop plant deployment guidelines?

18 A. Typically.

19 Q. All right. So you're going to have to
20 de-load that loop to make DSL work. Is that right?

21 A. Typically you have to remove the load,
22 yes.

1 Q. Okay. Where are the loads? Do you
2 know?

3 A. In the loop.

4 Q. Where?

5 A. Typically in the F1/F2 cabling.

6 Q. How many loads are there for that kind
7 of loop? If there's 19,000 feet, how many loads?

8 A. I don't know for sure.

9 Q. Isn't it three?

10 A. It could be.

11 Q. Isn't there one at 3,000, one at 9,000,
12 and one at 15,000?

13 A. I don't recall the exact guidelines.

14 Q. I thought you were a technical witness.

15 A. I am a technical witness.

16 Q. You don't know that.

17 A. I don't see the relevance.

18 Q. You don't know that.

19 A. Like I said, I have multiple outside
20 plant engineers working for me, so it's possible
21 that -- I don't personally oversee every single,
22 specific issue.

1 Q. Okay.

2 A. I've heard that before from my folks,
3 but I have not specifically seen that written
4 anywhere in the documents that you referred to.

5 Q. Have you ever read the company's loop
6 plant deployment guidelines, Mr. Boyer?

7 A. I have in the past.

8 Q. In the past?

9 A. Yes.

10 Q. What was the most recent time in which
11 you read those?

12 A. I don't remember.

13 Q. Okay. Where exactly in the loop plant
14 in my hypothetical, the 19,000 foot loop that has
15 loads right now, would you put a DSLAM to make DSL
16 work in a line sharing configuration?

17 A. I don't know exactly where you'd put it.
18 You'd have to put it somewhere where you could get
19 access to a facility that was a clean facility,
20 non-loaded facility. So depending upon where it
21 was loaded at, you'd have to take the load out and
22 you'd have to put the DSLAM at that location and

1 get a clean loop from that point to the customer
2 site.

3 Q. So you could de-load the loop partially?
4 Is that your testimony?

5 A. You could de-load a loop, yes.

6 Q. Partially.

7 A. I don't know what you refer to by
8 partially.

9 Q. Taking only some of the loads off.

10 A. You'd have to take the load off of that
11 particular loop, enough to make it to the point
12 where it was DSL capable, yes. I don't know what
13 you're referring to by partially.

14 Q. Well, let's assume that you would have a
15 19,000 foot loop and three loads. Can you assume
16 that with me?

17 A. Sure.

18 Q. And you want to put the DSLAM, as you're
19 testifying, somewhere so that the loop beyond it
20 was less than 18,000 feet. Right?

21 A. Right.

22 Q. Okay. So that could be where?

1 A. I see what you're getting at.

2 Q. 5,000 feet out, for example?

3 A. Depending upon the loop length.

4 Q. No, I'm asking you to assume it's 19,000

5 feet.

6 A. Oh, I'm sorry; I'm sorry.

7 Q. Give me an example of where you would

8 suggest this DSLAM be placed.

9 A. It could be placed at 5,000 feet, but

10 you'd have to take the loads beyond that point out

11 of the loop.

12 Q. Okay. So you take off the load at 9,000

13 and 15,000 then. Right?

14 A. Right.

15 Q. You'd leave the load that's placed at

16 3,000 where it is. Right?

17 A. It's possible. You wouldn't be using it

18 anymore, so.

19 Q. Okay. And then if you did that, you

20 could then get a clean loop from that point forward

21 for the DSLAMed DSL signal, right?

22 A. I would assume so, yes.

1 Q. Okay. What happens to the voice signal?

2 A. I honestly don't know. I have not
3 contemplated that scenario.

4 Q. I'm sorry?

5 A. I've not contemplated what would exactly
6 happen to the voice signal. I mean the voice
7 signal typically needs to be loaded to get out to
8 that location, so I'm not sure.

9 Q. Well, can you think of any configuration
10 that you might be aware of under which you'd place
11 the DSLAM as you just suggested that would still
12 allow the voice to work once you pulled the loads
13 off?

14 A. Well, it depends on where you placed the
15 DSLAM.

16 Q. Well, I'm asking you to assume that you
17 placed it at 5,000 like we just talked about.

18 A. Okay.

19 Q. And assume also you pulled off the loads
20 at 9,000 and 15,000 feet, leaving the load at 3,000
21 feet. Are you testifying that voice service will
22 work under those conditions?

1 A. I don't know. I don't know because what
2 I testified to is that originally if the loop is
3 greater than 18,000 feet, it would need to be
4 loaded. If you shorten the loop to 14,000 feet and
5 take the loads out, I don't know if the voice would
6 still work or not.

7 Q. We aren't shortening the loop here, are
8 we?

9 A. Well, you still have 14,000 feet of
10 copper beyond where that DSLAM is located at. It's
11 conceivable that the voice could still work in that
12 scenario, and it's conceivable that it may not, so
13 I don't know. We'd have to test it to see.

14 Q. You're not aware of I take it of any
15 such configuration ever being proposed or deployed
16 by anyone in the United States, are you?

17 MR. LIVINGSTON: You mean the configuration
18 that you guys are talking about?

19 Q. I mean deploying a DSLAM in the middle
20 of a copper loop, as you've described.

21 A. I'm aware of one CLEC in particular in
22 our territory that's placed a DSLAM in the field

1 and is accessing copper subloops to get to a
2 customer location. I'm also aware of the fact that
3 I believe that one of the other ILECs is using or
4 going to use DSLAMs as a deployment somewhat
5 similar to what we're doing with Project Pronto.

6 Q. I'm not talking about that, Mr. Boyer.
7 I'm talking about line sharing on the 19,000 foot
8 loop with a DSLAM in the field. Are you aware of
9 -- so that both the voice and the data actually
10 work. Are you aware of any such configuration
11 proposed or rolled out anywhere in this country by
12 anybody?

13 A. I personally don't know of anything.
14 It's possible, but I don't know if it exists. I
15 don't have any personal knowledge.

16 Q. Is this just your speculation created
17 here today?

18 A. Speculation of what?

19 Q. That it's possible to do this?

20 A. No. I don't think anybody has ever said
21 it's not possible to do this.

22 Q. All right. Well, let's just assume for

1 our discussion purposes that the company's loop
2 deployment guidelines actually are in place and
3 require loads above 18,000 feet. Can we assume
4 that again?

5 A. Sure.

6 Q. Okay. Now, as you have testified and as
7 the company has announced, Project Pronto extends
8 the reach of DSL by, in effect, shortening the
9 copper segment of a number of loops to below
10 18,000, in fact to no more than 12,000 feet.
11 Right?

12 A. If you measured the loop from the RT
13 site where the NGDLC equipment was placed, it would
14 be generally 12,000 feet or less.

15 Q. Okay. That's one of the deployment
16 guidelines of Pronto, right?

17 A. Right.

18 Q. Now, how much more -- if you think of
19 SBC's total market, total customer base, how much
20 was addressable with line shared ADSL before
21 Project Pronto? That is, what percent of your
22 customer base was reachable using central

1 office-based DSLAMs?

2 A. I think you've kind of asked me two
3 questions actually. You said what percentage are
4 reachable via line sharing and what was the
5 percentage reachable by DSLAMs.

6 Q. Central office-based DSLAMs.

7 A. Central office-based DSLAMs, generally
8 we say 40 percent across 13 states.

9 Q. Okay. And is that percentage roughly
10 true for Illinois as well?

11 A. Actually, I believe in Illinois that
12 percentage is a little higher. I think it's
13 somewhere around 60 percent.

14 Q. Sixty percent with home run copper and
15 DSLAMs in the central office?

16 A. Yes.

17 Q. Okay. And by that I mean -- when I say
18 line sharing, I mean ADSL sitting on top of an
19 analog POTS voice. Right?

20 A. Yes.

21 Q. That's what you mean too.

22 A. Right.

1 Q. So before Project Pronto you could reach
2 in Illinois about 60 percent of customers in that
3 kind of line sharing configuration. Is that right?

4 A. Yeah, somewhere around there. I don't
5 know the exact figure, but around 60 percent.

6 Q. Okay. And on a 13-state basis, once
7 Pronto is fully deployed and assuming that the
8 suspension in Illinois actually is lifted and you
9 keep deploying Project Pronto, what was the total
10 percentage addressable market after Project Pronto?

11 A. Generally, as I've stated in my
12 testimony, about 80 percent after the deployment.

13 Q. Okay. So you gained 40 percent
14 nationwide. What about the Illinois number for
15 that?

16 A. I've heard that the number would be a
17 little bit more than 80 in Illinois. Mr. Keown is
18 intimately familiar with the deployment so he might
19 know a little bit more about that than I do, the
20 exact number, but I've heard that it's a little bit
21 more than 80 in Illinois.

22 Q. Okay. So 80 plus percent. So that's

1 about a -- that's a 20 plus percent difference in
2 reach, if you will, after Pronto, right?

3 A. Give or take.

4 Q. Okay. How many lines in Illinois? Do
5 you know?

6 A. Oh, boy. How many access lines?

7 Q. Yeah, roughly.

8 A. I honestly don't know. I don't know.

9 Q. We'll stick with the percentages then.
10 Can we just talk roughly in terms of -- for talking
11 purposes of 25 percent more? Is that fair?

12 A. That's fair.

13 Q. Okay. All right. So for 25 percent of
14 the customers -- 25 percent more of the customers
15 with Pronto.

16 Now, on page 12 of your testimony, down
17 at lines 16 through 26, do you see that? Actually
18 -- yeah, I guess the reply is the testimony that I
19 have a pagination problem with, so I can quote
20 pages I think on the open. We have the same
21 pagination, right?

22 A. Sure.

1 Q. The question begins at line 17 and ends
2 at line 26. Is that what you have?

3 A. I have a question that starts on line 17
4 and ends on line 19. You're on page 12?

5 Q. And the answer I mean, the answer that
6 appears there.

7 A. Oh, yes, yes. You're right.

8 Q. Okay. We're fine.

9 Okay. Here you're saying that Pronto
10 ADSL architecture does not limit the availability
11 of the unbundled network options or elements that
12 we can get today. Right?

13 A. Yes. It appears to be.

14 Q. Okay. So what you're saying there is at
15 least for some time you're going to leave the home
16 run copper in place. Right?

17 A. Right.

18 Q. Now I want you to focus with me on loops
19 that are longer than 18,000 feet. Okay?

20 A. Okay.

21 Q. Those are going to be loaded, are they
22 not, for current voice grade services?

1 A. Typically, yes.

2 Q. Okay. I want you to explain to me then
3 how it is that Rhythms, if it couldn't get access
4 to Pronto as UNEs, could use an existing home run
5 copper loop longer than 18,000 feet to provide line
6 shared DSL service in Illinois.

7 A. You could collocate a DSLAM either
8 inside an RT or you could build your own structure.

9 Q. There's no RTs involved here. This is
10 just all copper I'm talking about, home run copper.

11 A. You're saying outside of Project Pronto?

12 Q. Yes. You're going to leave the existing
13 plant in place, right?

14 A. Right.

15 Q. Okay.

16 A. Okay.

17 Q. I want to use existing plant, meaning
18 home run copper, to do line sharing. How can I do
19 that beyond 18,000 feet?

20 A. Place your own structure and access the
21 copper facilities to the customer site and either
22 you could use fiber from that location back to the

1 central office or you could buy several other
2 unbundled network elements that the ILEC offers for
3 that purpose.

4 Q. Is this the put-the-DSLAM-in-the-middle-
5 of-a-copper-loop example you just talked about a
6 little bit --

7 A. Right, it is.

8 Q. Well, I don't want to provide voice. I
9 just want to provide the data on a line shared
10 configuration. You understand that, right? It's a
11 line sharing case.

12 A. Uh-huh. Yes, I understand it's a line
13 sharing case, yes.

14 Q. Okay. So how can Illinois Bell
15 Telephone keep providing the voice service on a
16 loop of let's say 30,000 feet? You have loops like
17 that, right, 30,000 feet?

18 A. I'm sure we have some.

19 Q. Okay. All right. So I want to -- and
20 you're going to put Pronto out there because right
21 now you can't reach those customers with DSL, can
22 you?

1 A. Right.

2 Q. 30,000 feet.

3 A. Right.

4 Q. So you put a Pronto RT out there, NGDLC
5 out there, and you limit the copper end segment to
6 12,000 feet and now you can. Right?

7 A. Right.

8 Q. So what you're saying is don't worry;
9 it's an overlay network; you can still use the
10 existing facilities for whatever you want to use
11 them for. Right? That's what you're saying here
12 on page 12.

13 A. Right. The existing facilities are
14 still there so it doesn't change anything.

15 Q. Okay. So I want to provide line sharing
16 on a 30,000 foot copper loop. I want you to do the
17 voice and have me do the data, line sharing. How
18 do I do that?

19 A. You would have to put a -- you would
20 have to put a DSLAM or some similar device out in
21 the loop plant where you could utilize the copper
22 from that DSLAM back to the customer site to do the

1 DSL essentially, and in some manner the CLEC, I
2 guess Rhythms, would have to hand the voice back
3 off to the ILEC at some point in the network, and
4 we would have to transport the voice back to the
5 central office location, but there's several ways
6 that voice could be transmitted back to the central
7 office. It doesn't necessarily -- I mean I see
8 where you're -- you're alluding to the fact that it
9 would have to be over copper. That's not
10 necessarily the case. You could hand that voice
11 back off to us wherever you split the voice and
12 data signal. Typically that would be done wherever
13 the splitter is located at which might be --
14 there's several different alternatives. The
15 splitter could be within your DSLAM or provided by
16 the CLEC. It could be provided in some scenarios
17 by the ILEC if we had a splitter out there that we
18 were willing to deploy, and then from that point,
19 once it was split, there's all sorts of different
20 things that could be done to get the voice back to
21 the central office.

22 Q. Well, I don't want to talk about what's

1 possible to do on a changed basis, Mr. Boyer. I
2 read your testimony here, and I'm going to quote
3 you here. "Due to the overlay nature of the Project
4 Pronto deployment, CLECs would continue to have all
5 of the competitive options that are available to
6 them today." Does that mean that we can continue
7 not to be able to line share on loops of 30,000
8 feet? Is that what you're saying there?

9 A. No. You're mischaracterizing my
10 testimony. What I'm saying --

11 Q. I'm just trying to understand your
12 testimony.

13 A. What I'm saying is that the Project
14 Pronto architecture is an overlay network, so
15 whatever options that a CLEC has today are not
16 changed.

17 JUDGE WOODS: Slower, please. Slower, please.

18 A. I'm sorry.

19 Q. Okay. Then isn't it the case that we
20 have no option for line sharing today on a loop of
21 30,000 feet that's all copper?

22 A. No, I don't agree with that.

1 Q. I can get an unbundled loop from
2 Ameritech Illinois right now that's 30,000 feet
3 long and I can line share on that. Is that your
4 testimony?

5 A. It is my testimony that if a CLEC wants
6 to provision line sharing to a location that's
7 greater than 18,000 feet, that it is possible
8 today, yes, regardless of Project Pronto.

9 Q. All right. Why don't you just tell me
10 how -- you can't do that with a single unbundled
11 loop in a CO-based DSLAM, can you?

12 A. No. You have to have something out in
13 the field, either an RT or a remotely located DSLAM
14 or some sort, to provision the DSL to that
15 customer.

16 Q. So if I have one customer out in the
17 field, I should go out there and put a DSLAM
18 somewhere, somewhere you can't tell me, but
19 somewhere out in the loop plant to do that?

20 A. Well, that's not true. I haven't told
21 you where. There's multiple locations where --

22 Q. Tell me where then.

1 A. You could place it inside a Project
2 Pronto RT site. You could place it in your own
3 structure that you built and then hand the voice
4 traffic back off to Ameritech Illinois.

5 Q. I'm suppose to go out and build a
6 structure that includes a DSLAM for one customer?

7 A. That's your business decision if you
8 want to do that or not. That doesn't mean it's not
9 possible.

10 Q. Then how do I get -- assuming that
11 that's possible with me, I can put something out
12 there -- I can spend the tens of thousands of
13 dollars required to do that for one customer, how
14 do I give the voice back to you? I want to line
15 share. All I want to do is the data for this
16 30,000-foot-away customer. How do I give you back
17 the voice?

18 A. You hand the voice back off to us at
19 some point.

20 Q. Where?

21 A. Most likely out in the field somewhere
22 where we can get it back to the office.

1 Q. Where in the field, Mr. Boyer?

2 A. Either at the RT location, wherever it's
3 split. Wherever the signal is split, wherever you
4 physically put your DSLAM, wherever that signal is
5 actually split, the voice would be handed back off
6 to the ILEC. That could be at the RT site,
7 wherever that equipment is located at.

8 Q. Okay. Let's assume that it's in between
9 the RT and the SAI.

10 A. Okay.

11 Q. Do you know what an SAI is?

12 A. Sure.

13 Q. How do I hand off the signal to you, the
14 voice signal to you if my DSLAM is out there
15 somewhere in between the RT and the SAI? How do I
16 do that?

17 A. If you had your DSLAM at a point in the
18 network between the RT and the SAI, you would have
19 to split the signal and hand the signal back off to
20 us.

21 Q. How?

22 A. I did not testify specifically how that

1 could be done. It could be done.

2 Q. I want you to tell us how. Now is it
3 possible?

4 A. I believe that Mr. Welch has attached a
5 detailed diagram to his testimony of exactly how
6 this could be done.

7 Q. That's an engineering control splice.

8 A. Right.

9 Q. Which the company is offering in lieu of
10 a cross-connect field at the RT. Mr. Welch doesn't
11 testify to what you're testifying about at all,
12 Mr. Boyer. I want you to --

13 A. You asked me how it could be done.

14 Q. I want you to tell me -- I'm positing to
15 you a situation that Mr. Welch does not address. I
16 have placed my DSLAM per your suggestion between
17 the RT and the SAI.

18 A. Okay.

19 Q. I want you to tell me right now how I
20 can hand you back the voice in detail.

21 A. If you had your DSLAM out there and you
22 split the signal, you could put something out there

1 that would allow you to hand the voice back off to
2 us, just like we do with the -- (inaudible).
3 Simply because we have offered to build it doesn't
4 mean it can't be built.

5 Q. What's the something?

6 A. A cross-connect point.

7 Q. What kind of cross-connect point?

8 A. You would take the copper facility into
9 a splitter. You would split the voice and data and
10 you'd have a cross-connect. From wherever it was
11 split at, you would take the voice traffic that was
12 provided off that and you would hand it off to us
13 wherever it was split at.

14 Q. Do you have cross-connects?

15 A. The same thing that would be --

16 REPORTER DAVIS: You're going to have to slow
17 down. I just cannot, cannot keep up.

18 JUDGE WOODS: I think it's time to move on,
19 Mr. Bowen.

20 MR. BOWEN: Okay.

21 JUDGE WOODS: We've had enough.

22 MR. BOWEN: Okay.

1 Q. Now you testify on the FCC's -- I'm
2 sorry -- the Act's so-called necessary and impair
3 standard as part of your testimony, do you not?

4 A. Yes.

5 Q. Okay. Am I right that we're not on the
6 "necessary" leg of that standard? That is, you
7 don't view the analysis to be required to even look
8 at the "necessary" leg of that standard. Is that
9 right?

10 A. I'm not sure if that's what I've said in
11 here. I'd have to go back and look at it. Can you
12 point to me where it is?

13 Q. No. Do you recall mentioning the
14 necessary leg of that standard anywhere in any of
15 your testimony, Mr. Boyer?

16 A. I think I generally talk about the
17 impair standard.

18 Q. Okay. What's the difference between the
19 two standards, the necessary standard and the
20 impair standard? Do you know?

21 A. Not really, no. I was asked to look at
22 the impair standard, and that's what I addressed.

1 Q. Okay. Have you read the Act?

2 A. Sure.

3 Q. The portion of the Act that this is
4 contained in?

5 A. Yes, I have.

6 Q. Okay. Do you recall anything at all
7 about proprietary equipment or systems in the Act
8 on this topic?

9 A. Yes. I mean, generally speaking, the
10 way I've looked at necessary would mean that it
11 would have to have something that required
12 proprietary --

13 JUDGE WOODS: Slow down.

14 A. I'm sorry.

15 JUDGE WOODS: Please slow down.

16 A. I'm sorry. My understanding was that in
17 order for the necessary standard to apply, it would
18 have to be found to be proprietary, and generally I
19 don't believe in my testimony I've characterized it
20 as being proprietary so I focus on impair.

21 Q. So we can conclude from that, given your
22 thorough testimony, that you or the company does

1 not assert that there's anything proprietary about
2 the Pronto rollout. Isn't that fair?

3 A. I don't know if I'd agree with that
4 characterization. I would say that our view as SBC
5 is that the equipment that we purchase is offered
6 by a vendor, so if there's any proprietary elements
7 there, it would be vendor proprietary.

8 Q. I mean proprietary in the sense that the
9 Act means it and as you understand the Act.

10 MR. LIVINGSTON: Object to the extent it calls
11 for a legal conclusion.

12 MR. BOWEN: I'm not asking this witness or any
13 witness for such a conclusion, Your Honor. I
14 thought I made that clear.

15 JUDGE WOODS: His testimony is full of
16 references to the Act. He can answer.

17 Q. In other words, let me put it this way.
18 In your testimony you are not asserting that any
19 portion of the Pronto rollout is proprietary in the
20 sense that the Act uses that term and therefore
21 triggering the necessary standard. Isn't that
22 right?

1 A. I do not believe my assertion is that
2 way, no.

3 Q. I'm sorry?

4 A. My assertion is not that the proprietary
5 standard would apply in this particular instance.

6 Q. So you're on the impair leg, right?

7 A. That's what I've addressed.

8 Q. Okay. I just wanted to clarify that.
9 Thank you.

10 A. All right.

11 Q. And you have an understanding of what
12 the impair standard is, do you not, since you've
13 testified to it in detail?

14 A. I have a general understanding, yes.

15 Q. All right. I want you to think now
16 about what you just told me about how on a 30,000
17 foot loop, without using Pronto, Rhythms could line
18 share in the fashion you described. Okay? And I
19 want you to apply the impair standard as you
20 understand it.

21 A. Okay.

22 Q. If Rhythms did that, assuming that it

1 might be possible technically to do that, do you
2 think that Rhythms would be impaired in the sense
3 you understand that term by doing so?

4 A. My view would be -- well, first, my view
5 would be that it is technically possible to do and
6 that I do not believe that Rhythms would be
7 impaired from doing that, no.

8 Q. Okay. So just to understand your answer
9 there, a 30,000 foot loop, one customer, we go out
10 and put a DSLAM out there. We somehow get the
11 traffic back to our office from the DSLAM. We hand
12 you the voice via the kind of cross-connect you
13 alluded to. That's what you're saying that we
14 would not be impaired under your analysis. Is that
15 right?

16 A. I don't believe that you would be
17 impaired from provisioning line sharing in that
18 scenario.

19 Q. Okay.

20 A. Because it is technically possible to be
21 done.

22 Q. Okay. So I take it from that then that

1 the standard you've applied in your testimony to
2 what impair means equates to technical feasibility.
3 Is that fair?

4 A. No. I mean I've looked at several
5 others things in terms of --

6 Q. Did you look at the economics of things?

7 A. I did not speak to the economics, no.

8 Q. Is that any part of the impair analysis
9 that the FCC might have talked about?

10 A. It's definitely possible.

11 Q. I'm not asking what's possible. I'm
12 asking for your understanding of the impair
13 standard as applied by the FCC in its orders. You
14 have read those, right?

15 A. Yes.

16 Q. Does the FCC consider in any way
17 economics when it comes to the impair standard?

18 A. Well, I think that the impair standard
19 generally speaks of the totality of the
20 circumstances, so I would assume that economics
21 would be one thing that would be considered.

22 Q. Okay. And did you consider economics in

1 your impair analysis?

2 A. My impair analysis was directly related
3 to responding to a question from Commissioner
4 Squires. I think what I've said in my testimony is
5 that I'm not privy to a CLEC's economic situation,
6 so I would expect that your witnesses would address
7 that.

8 Q. Did you consider economics in your
9 impair analysis, Mr. Boyer?

10 A. I did not look at economics in this
11 situation, no.

12 Q. Okay. Did you look solely at technical
13 feasibility issues?

14 A. Not solely, no.

15 Q. What else did you look at besides
16 technical feasibility?

17 A. We talked through several other
18 technologies and alternatives that may exist in the
19 market today.

20 Q. And for those alternatives did you
21 assess any economic feasibility of those
22 alternatives?

1 A. No.

2 Q. Okay. I want you now to come back to my
3 question, which is a 30,000 loop, one customer,
4 DSLAM in the field, getting back to the office
5 somehow and handing you off the voice out there at
6 the DSLAM, and I want you to include what the FCC
7 says should be included, that is an economic
8 factor, and include the totality of the
9 circumstances the FCC mandates in the analysis and
10 now answer the question. Do you think we would be
11 impaired by that kind of deployment?

12 A. I think, in my opinion, it would depend
13 upon the circumstances.

14 Q. I just gave you the circumstances.

15 A. Well, I think it would still depend upon
16 additional circumstances. I think that in
17 instances that it would certainly be economic for
18 someone to put their own equipment out in the field
19 and provision service. It would really be a factor
20 of how expensive the equipment was and how many
21 customers were being provided service.

22 Q. Could it ever be non-impairing for a

1 single customer in my example in your opinion?

2 A. It would depend upon how you viewed it
3 from an economic perspective I guess.

4 Q. So it could be.

5 A. It could be; it could not be, yeah.

6 Q. Okay. Now on page 6 of your testimony

7 --

8 JUDGE WOODS: Let's take ten.

9 (Whereupon a short recess
10 was taken.)

11 JUDGE WOODS: Back on the record.

12 MR. BOWEN: Your Honor, could she just read
13 back the last -- the tail of the last thing so I
14 can see where we were?

15 JUDGE WOODS: We'll see.

16 (Whereupon the requested
17 portion of the record was
18 read back by the Court
19 Reporter.)

20 MR. BOWEN: Okay. I know where I'm at. That
21 was enough.

22 JUDGE WOODS: That wasn't even a tail. That

1 was more of a nut.

2 MR. BOWEN:

3 Q. On page 6 of your testimony, Mr. Boyer,
4 beginning at line 8, you're talking about the
5 components that you think make up the Project
6 Pronto architecture. Do you see that?

7 A. Yes, I do.

8 Q. And one of those -- well, actually you
9 start by saying the only portion of the existing
10 network that would be used with Pronto is the
11 copper subloop from the end-user's premises to the
12 SAI. Do you see that?

13 A. Can you point me to that?

14 Q. Line 10 through 12.

15 MR. LIVINGSTON: Could you help me out with
16 what page you're on?

17 MR. BOWEN: Page 6.

18 MR. LIVINGSTON: Thank you. Of his direct?

19 MR. BOWEN: Yes.

20 MR. LIVINGSTON: Okay.

21 A. I've stated that generally speaking that
22 would be the case, yes.

1 Q. Okay. Well, the implication of that is
2 that the copper feeder between the SAI and the RT
3 will be installed as Project Pronto. Isn't that
4 right?

5 A. You're speaking of the copper feeder
6 pair from the SAI to the RT?

7 Q. Yes.

8 A. In most instances, yes.

9 Q. In fact, you say that on line 16, right?
10 The copper feeder pairs between an SAI and a
11 Project Pronto RT?

12 A. Right. In most instances, yes.

13 Q. First of all, do you know on an average
14 basis if you assume a new RT installation like
15 we've been talking about, you know, a LiteSpan 2000
16 in a LiteSpan 2016 cabinet, how many new feeder
17 pairs are being installed between that new RT
18 location and the SAIs?

19 A. I don't know the exact number.

20 Q. I know. Just give me an approximation.

21 A. Generally, if we put in a new Project
22 Pronto RT site, my understanding is that we would

1 put out pairs in 25-pair binder groups. Mr. Keown
2 would certainly know more detail because that's his
3 responsibility.

4 Q. Well, I would also assume you would use
5 your standard cable configuration, but what I'm
6 talking about is how many total cables, how many
7 total feeder pair would you normally deploy? Do
8 you know?

9 A. I don't know.

10 Q. Would Mr. Keown know that?

11 A. I would guess he would.

12 Q. Well, where did you get your information
13 you put on this page? It wasn't from your own
14 personal knowledge apparently, right?

15 A. It was from my own personal knowledge
16 because my understanding from numerous discussions
17 I've had with various people throughout the company
18 is that in most instances the majority of the time
19 Project Pronto consists of the build of a new RT
20 site. If you build a new RT site, you have to lay
21 new copper facilities from that RT site out to the
22 SAI to pick up the facility from the SAI to the

1 customer site, so it is my own personal knowledge,
2 yes.

3 Q. Okay. Well, do you know the -- if you
4 assume with me a LiteSpan 2000 in a fully
5 configured cabinet, do you know how many lines that
6 will serve?

7 A. Depending upon the cabinet.

8 Q. A LiteSpan 2016 with nine CBAs,
9 Mr. Boyer. How many POTS lines will that support?

10 A. 2,016.

11 Q. Okay. And when you roll a new Pronto RT
12 out there, you don't know -- well, let me put it
13 this way. Do you know whether the company is only
14 installing enough new feeder pairs between the new
15 RT location and the SAI to support the expected
16 ADSL take rate?

17 A. As I stated before, I'm not sure how
18 many pairs they would be rolling out to the
19 multiple SAIs. I don't know.

20 Q. Okay. Let's talk about existing RT
21 sites. It is possible, is it not, if you know, to
22 upgrade LiteSpan 2000 to be Pronto capable?

1 A. Yes, it is.

2 Q. Do you know how you do that?

3 A. Yes. You have to -- well, again, for
4 the DSL channel banks, some of the channel banks
5 are non-DSL, so you'd have to plug in what's called
6 an ATM bank control unit. You'd have to replace
7 the existing bank control unit, the POTS unit, with
8 an ATM bank control unit, ABCU card for short, and
9 you'd have to upgrade the system software to at
10 least -- I'm not sure what the current version is.
11 It's 10.2 or 10.3 at this point, and you would have
12 to replace or, if there was space, plug in ADLU,
13 ADSL digital line unit cards into the slots. So
14 there's several things you'd have to do, but it is
15 possible.

16 Q. Okay. Wouldn't you also need in your
17 configuration to use two additional fibers to carry
18 the ATM cell traffic?

19 A. I'd say typically you'd have to dedicate
20 fiber to the DSL channel banks, so that's most
21 likely what would happen.

22 Q. Okay. And that's the complete upgrade

1 then. Right?

2 A. That would be the upgrade.

3 Q. Okay. Well, aren't there already pairs
4 running from that NGDLC to all the SAIs that
5 subtend that?

6 A. Sure.

7 Q. Are you saying that you're going to be
8 installing new copper feeder pairs in that
9 configuration between the RT and the SAIs?

10 A. No. What I've stated is generally
11 speaking, and as I've spoken to today, the majority
12 of the time it would be new, and if it's a new RT,
13 we would have to lay new copper. If it's an
14 existing RT, then, no, we wouldn't.

15 Q. Okay. So do you -- is it the case then
16 that -- I'm trying to figure out where the overlay
17 ends.

18 A. I don't follow.

19 Q. The Project Pronto is so-called overlay
20 network. You say generally it's everything except
21 for the copper subloop from the SAI to the
22 premises, right?

1 A. Right.

2 Q. But that's not true with respect to
3 existing RT upgrades, right?

4 A. With existing RT upgrades everything
5 would be new, but the copper pair from the -- well,
6 the copper pair from the SAI to the RT would be
7 existing. That's true. It would be at that
8 facility and the facility from the SAI to the
9 customer. That would be existing in that case if
10 we upgrade.

11 Q. And so would most of the NGDLC
12 equipment, wouldn't it, be existing?

13 A. Other than the system software, the
14 additional ABCU cards, ADLU cards, and the fiber
15 and the OCD at the other end. None of that would
16 exist.

17 Q. So this example is meant only to address
18 then the new RT placements. Is that fair?

19 A. No. Again, what I've stated is
20 generally speaking. If you assume that a majority
21 of the time it's going to be a new RT site, this
22 example is correct, and I've never stated

1 otherwise.

2 Q. Okay. Now on page 9 of your testimony,
3 look with me, please, at lines 7 and 8.

4 A. Okay.

5 Q. Now, were you here during the
6 cross-examination of Mr. Ireland?

7 A. I was in the morning session. I was not
8 here the rest of the time.

9 Q. Okay. Your sentence here I'm going to
10 quote says: "First, SBC has always viewed Project
11 Pronto as a means to extend broadband high-speed
12 Internet access capability to the mass market." Do
13 you see that?

14 A. Yes.

15 Q. Would you agree with me that the actual
16 purpose of Project Pronto is not just for Internet
17 access?

18 A. I would generally agree that it's not
19 the only thing it was for. It has been the
20 predominant thing.

21 Q. Predominant meaning today as a snapshot
22 or predominant meaning over the life of the asset?

1 A. Well, I would say that Project Pronto is
2 more than simply the deployment of NGDLC. When I
3 look at Project Pronto, there's several different
4 initiatives that are included there, such as the
5 VTOA initiative. There's also the T1 rolls which
6 are beyond the NGDLC architecture. So in terms of
7 Project Pronto itself, the business case, the
8 project would encompass more than simply consumer
9 Internet access. What we're talking about here
10 though is the NGDLC architecture, and that is
11 predominantly what that is going to be used for.

12 Q. Okay. And as far as you're concerned,
13 you mentioned VTOA. That's voice trunking over
14 ATM. Is that right?

15 A. That's would be one way. I think it
16 might be voice transmission. I'm not certain of
17 the second word.

18 Q. Okay. Whichever. As far as you know,
19 that's still under active consideration by the
20 company as a part of Pronto.

21 A. My understanding was that we originally
22 considered that, and we came to the conclusion that

1 it wasn't working as well as we thought. I think
2 we're still looking at it, but I don't think we've
3 made any decision as to whether we're going to do
4 it or not.

5 Q. Okay. You've read the Investor Briefing
6 from October '99, have you not?

7 A. I have.

8 Q. Okay. You'll agree with me that that
9 document discloses to investors a lot more uses of
10 the Pronto platform than just Internet access?

11 A. It does.

12 Q. Okay. And have you read the business
13 case that's confidential that the board used to --
14 relied on, in part, to approve the Project Pronto
15 rollout?

16 A. I have read the business case. I'm not
17 sure if the board voted on it or not.

18 Q. Okay. And doesn't that give a lot more
19 detail about things besides Internet access that
20 Project Pronto is designed to support?

21 A. Yes. I believe it talks specifically
22 about the T1 rolls and also about VTOA.

1 Q. Does it talk about any other services
2 that might be supported on the NGDLC portion of
3 Project Pronto that you can recall?

4 A. I'm not certain. I'd have to look at it
5 again.

6 Q. I just want to know what you know
7 sitting here. That's fine.

8 A. No, I don't recall if it did.

9 Q. Okay. You weren't trying to indicate by
10 simply talking about Internet access that that was
11 the only thing -- only reason that SBC was rolling
12 Pronto, were you?

13 A. My view is that regardless of what the
14 architecture may or may not have been intended for
15 when we first started deploying it, today the way
16 we are practically using it is basically for
17 consumer Internet access. That's essentially what
18 it's being deployed for. The technology just
19 generally doesn't support much more than that at
20 this point in time.

21 Q. The platform doesn't support
22 voice-over-DSL right now?

1 A. The platform could support
2 voice-over-DSL. However, there's several issues as
3 to whether or not voice-over-DSL as a practical
4 matter is something that someone can provision due
5 to vendor issues.

6 Q. Well, you say that how we're using it
7 right now is for Internet access. Did I hear you
8 right?

9 A. Well, how we're deploying it is intended
10 for Internet access, ADSL traffic which is
11 typically Internet access.

12 Q. Well, who is the we there?

13 A. The telco. That's what it's being
14 deployed for. That's who is deploying it.

15 Q. And they're deploying it for Internet
16 access.

17 A. We're deploying it as a means to extend
18 the availability of Internet access.

19 Q. I thought you couldn't provide any
20 services, advanced services, like the ones that
21 AADS does as a telco.

22 A. My understanding is that the telco

1 doesn't offer those, no, but that doesn't mean that
2 we can't deploy a technology in our network to
3 offer to extend the capability of a service to
4 other providers. Any CLEC could use the product
5 that we offer, so we just extended the capability.

6 Q. Okay. Well, would you agree that CLECs
7 should be able to use the platform, including AADS,
8 for whatever it can do?

9 A. I would say that CLECs should be able to
10 use the platform for what it can do within the
11 technical constraints that we're operating in.

12 Q. Okay. Fair enough.

13 A. Without adversely affecting all of the
14 other services and different things that could be
15 provisioned over it.

16 Q. Okay. Would you agree that so long as
17 AADS is a separate company, that it's not Ameritech
18 Illinois' business to decide what kinds of services
19 should be offered over its platform?

20 A. No.

21 Q. Whether they're sold as a wholesale
22 broadband service or as UNEs?

1 A. I would disagree with that because I
2 think Ameritech Illinois has a very distinct
3 interest in the services provisioned over this
4 particular architecture because of the way it would
5 adversely impact the overall network. We have
6 deployed a network that can support the expansion
7 of consumer Internet access to the mass market. If
8 somebody wants to come along and offer a service
9 for some other purpose, whatever that purpose might
10 be, or even a more advanced service than what we
11 originally offered, something more advanced than
12 ADSL, that would cause Ameritech Illinois to have
13 to spend a large amount of money to enhance and
14 upgrade this architecture to support that, so we do
15 have a very vested interest in what services are
16 provisioned over this.

17 Q. Okay. Now if you offer the Project
18 Pronto architecture as UNEs, you get paid rates
19 based on TELRIC. Isn't that right?

20 A. I would assume so, yes.

21 Q. Okay. Hasn't both the FCC and this
22 Commission declared TELRIC-compliant rates to be

1 fully compensatory to the company?

2 A. I'm not sure of whether the FCC or this
3 Commission has. I'm assuming that they may have.
4 I would disagree that simply because you can charge
5 a TELRIC-based rate for a product means that we
6 could get compensatory for the additional network
7 that we have to deploy to support it because it's
8 simple -- it's a pretty simple concept. If we have
9 to buy a piece of equipment for additional -- like,
10 for example, an additional OCD that might cost us
11 2- to \$250,000 to put in a central office and we
12 only get one line provisioned or two lines
13 provisioned or one customer, we're not going to
14 recover our costs, so you'd have to have somebody
15 -- you'd have to charge that full price ahead of
16 time. So I don't agree that TELRIC pricing for a
17 product could do that.

18 Q. So basically your conclusions are based
19 upon a fundamental challenge to the TELRIC concept
20 as being compensatory.

21 A. No, that's not what it is. It's based
22 upon the fact that if a CLEC provisioned a service,

1 for instance -- I'll give you an example. If a
2 CLEC provisioned a service, for instance, you've
3 asked for PVPs. If a CLEC provisioned a PVP that
4 was greater than approximately 20 percent of the
5 bandwidth from an RT site back to the central
6 office, that would create a situation in which it
7 would so adversely impact the other services
8 provisioned over that that our only choice in order
9 to maintain a consistent quality of service would
10 be to break the daisy chain and provide additional
11 bandwidth of some sort or do something else other
12 than breaking the chain to provide additional
13 bandwidth. So the problem with that would be that
14 simply because you've sold that 20 megabit PVP to a
15 CLEC and you've gotten the price for that, it
16 doesn't pay for all of the additional functions,
17 the additional capital that would have to be
18 invested to support that. It doesn't pay for the
19 additional fiber that would have to be placed
20 because we had to break the chain or do something
21 else to the network. It doesn't pay for the
22 potential additional OCDs --

1 JUDGE WOODS: Please slow down.

2 A. I'm sorry. It doesn't pay for the
3 additional potential OCD in the central office. It
4 wouldn't pay for that. You would have to
5 incorporate the price for all of the network
6 enhancements into the price for that particular
7 element to ensure cost recovery, so I'm not
8 disputing whether TELRIC is applied appropriately
9 or not. What I'm disputing is is that if there is
10 a product offering that drives significant capital
11 into any business, that business has to have enough
12 demand of the products that are going to be
13 provisioned over that additional capital to recover
14 its investment.

15 Q. And is TELRIC, in your view, somehow
16 inefficient at capturing all the costs that the
17 demand causes?

18 A. In my view, TELRIC is irrelevant,
19 whether it's TELRIC or not. The issue is is there
20 enough demand to allow us to recover our cost
21 however it's priced.

22 Q. Okay.

1 Well, will you agree with me that it is
2 not Ameritech Illinois' place to decide what
3 particular services are offered over UNEs?

4 A. Over existing UNEs?

5 Q. Yes.

6 A. Like, for instance, a loop? My
7 understanding is is that if you take a loop as an
8 example, the CLEC can use the loop for the full
9 features of that loop, yes.

10 Q. Isn't that, in fact, a fundamental
11 concept integral to the UNE of that loop? That is,
12 you can use the piece of the network that you get
13 from the ILEC for whatever it can do consistent
14 with the technical requirements that might apply.
15 Is that right?

16 A. So much so that it doesn't impact the
17 other, you know, other services, and generally with
18 a UNE you have a distinct -- for instance, with a
19 loop you have a distinct copper facility that
20 wouldn't necessarily impact everything else, so I
21 would assume that within the technical limitations
22 of that, yes, that would be what you would use it

1 for, whatever you wanted.

2 Q. Okay. Now, do you view the company's
3 deployment of Project Pronto as being a one-time,
4 static addition to plant?

5 A. I would view Project Pronto as being a
6 deployment designed to extend, like I've said, the
7 availability of Internet access. It's an ongoing
8 deployment, so it's continuing, so I don't view it
9 as being static. It's going on. It's going to
10 continue going on.

11 Q. That wasn't my question. I want you to
12 -- I know it takes three years to build. When you
13 get to the end of three years, do you think that
14 you're done?

15 A. No. I think that there's -- in terms of
16 Project Pronto possibly. I've said earlier Project
17 Pronto consists of multiple potential deployments.
18 It could be -- I think we talked about something
19 referred to as APON in the business case that is
20 considered part of Project Pronto which is the
21 technology that we were contemplating deploying for
22 T1 rolls, so there's always projects and

1 initiatives that are started, so I don't view -- I
2 view the network and technology always evolving,
3 so.

4 Q. I have in mind more not the new features
5 like APON that can be added, but simply the use of
6 the core Project Pronto NGDLC infrastructure. The
7 issues you've talked about in terms of capacity
8 constraints, for example, at the OCD, at the NGDLC,
9 in the card slots and so forth, can we talk about
10 just that subset of the possibilities for a minute?

11 A. So you're saying would we expand the
12 NGDLC basically.

13 Q. I'm saying for example --

14 MR. LIVINGSTON: Let him ask the question.

15 Q. If AADS sells a whole lot of Internet
16 access and AADS takes a whole lot of those 96
17 kilobit per second CBRs, it does whatever it wants
18 to with them, and everybody else does as well, are
19 we simply saying, well, once you get to the limit
20 of that NGDLC we're done? We simply will not add
21 any more capacity even though we have demand for
22 it. Is that your testimony?

1 A. In your hypothetical situation, the way
2 we have measured the capacity of this system is is
3 that we could offer -- I'm sorry -- we could offer
4 96 kilobits CBR and the existing UBR, unspecified
5 bit rate, service almost to its full functionality
6 over the architecture without having to expand the
7 capacity.

8 Q. Okay. So let's say then that there is
9 demand on the part of your affiliate AADS, Rhythms,
10 Covad and everybody else out there for more
11 throughput capacity. Are you saying then that you
12 won't expand your facilities to meet that demand?

13 A. I would say that would be a business
14 decision on the part of the telephone company. We
15 would have to look at what services that particular
16 entity wanted to offer, whether that entity offered
17 enough potential return for us to make the decision
18 to build out additional capital. That's what any
19 business does in looking at a new project or a new
20 initiative.

21 Q. Well, let's assume that as of January
22 whatever, 2002, the company decides to roll AADS

1 back into the company and to roll ASI back into the
2 company under the ASCENT decision. Can you assume
3 that with me?

4 A. Hypothetically, sure.

5 Q. Okay. So now there isn't any separate
6 CLEC. We're back to Illinois Bell providing
7 advanced services directly. Right?

8 A. Okay.

9 Q. At retail. Right?

10 A. I would assume that would be the case in
11 your hypothetical, yes.

12 Q. Okay. Isn't it true that you could make
13 a business decision under those circumstances to
14 expand, as you always do, your facilities to meet
15 the demand?

16 A. In a hypothetical situation, I think any
17 business could make a decision to invest new
18 capital to meet demand.

19 Q. Can you point out to me any circumstance
20 that you're aware of in Illinois where Ameritech
21 has ever decided to stop expanding its facilities
22 when they're at capacity in the presence of

1 unsatisfied demand? Ever.

2 A. I can't think of a specific example, but
3 I can tell you that this architecture is different
4 than most other architectures that exist. It's a
5 little bit more difficult to expand this because of
6 the limitations of the system. I mean we can't --
7 there's really only one alternative to expand the
8 bandwidth and that is to break the daisy chain.
9 The other alternatives just simply at this point of
10 time, given the limitations, just aren't very
11 viable, so you would have to look at it from that
12 perspective. There's not as many options to grow
13 capacity in this scenario as there would be in
14 others.

15 JUDGE WOODS: Grow what?

16 A. Grow capacity.

17 MR. LIVINGSTON: In this scenario.

18 A. In this scenario.

19 Q. So what you're saying is that this
20 particular fiber-fed system is more constrained
21 than say -- in terms of growth than say a copper
22 system?

1 A. I don't necessarily agree with that
2 analogy, but I would say that in terms of the
3 network in general, this particular architecture
4 does present some pretty significant limitations in
5 terms of growing capacity, yes.

6 Q. Okay, and those would be, from your
7 testimony, chiefly the OCD capacity constraint? Is
8 that one of those?

9 A. Well, you would have the issue of --
10 like I said, the only way I can think of from a
11 practical standpoint to enhance the bandwidth over
12 this system would be to break the chain and provide
13 multiple fibers to each channel bank, so you have a
14 direct impact in terms of additional fiber and in
15 terms of the OCD, so.

16 Q. I understand that, but the fiber and the
17 OCD are the constraints you have in mind when you
18 testified. Is that right?

19 A. Generally, yes.

20 Q. Okay. And your testimony is that those
21 are severe constraints. Is that your testimony?

22 A. Yes, I would view those as being pretty

1 severe. The cost to buy another OCD is rather
2 significant.

3 Q. They are so unique, in fact, I take it
4 from your testimony, that one or the other or both
5 of those would cause Ameritech not to deploy any
6 additional facilities to meet unsatisfied demand on
7 this architecture. Is that your testimony?

8 A. I can't say for sure what would happen
9 in the future. If there was enough demand there to
10 justify the expense of doing that precise
11 arrangement, then it's possible it could be done.
12 I don't know.

13 Q. Well, you're testifying here that we
14 should not be allowed to get what we're asking for
15 because to do so would cause SBC to deploy more
16 fiber and more OCDs, aren't you?

17 A. What you've asked for is that SBC or
18 Ameritech Illinois deploy in a general level a much
19 more advanced network in terms of bandwidth than
20 exists today without any guarantee of any kind of
21 return at all.

22 Q. Who said that? Which witness said that?

1 A. I have not seen any evidence provided by
2 any of the CLECs that states that there's any
3 demand or what your demand is.

4 Q. No, I want you to tell me which witness
5 said that we're asking you to deploy more advanced
6 network than you're deploying now.

7 A. I don't need a witness to say that.
8 That's what you've proposed to the Commission
9 throughout this case. You've asked us to break the
10 chain. Mr. Watson speaks of that specifically in
11 his testimony.

12 Q. Okay. Let's come back to your testimony
13 at page 10, please. Now here you're discussing and
14 quoting from the FCC's Waiver Order, are you not?

15 A. Which part of it?

16 Q. Well, starting at page 10, line 4, that
17 question, there's a citation to the Waiver Order in
18 footnote 6, and then you go on to talk about in the
19 next question the same order, don't you?

20 A. Yes.

21 Q. Okay. All right. Will you agree with
22 me that the Waiver Order -- let me start -- the

1 request that SBC made to the FCC was a narrow
2 request for a waiver of the merger conditions
3 concerning the OCD and ADLU card ownership?

4 A. Yes.

5 Q. Would you also agree that nothing in the
6 Waiver Order says that Project Pronto does not have
7 to be unbundled and offered as UNEs?

8 A. Based upon my knowledge of the Waiver
9 Order, I don't believe it says it does not have to
10 be unbundled. I don't think it actually addresses
11 that specifically.

12 Q. Okay. Isn't it correct that you and the
13 company are relying on the Waiver Order as your
14 support for only offering Project Pronto as a
15 service instead of as UNEs?

16 A. I don't believe that's the case. The
17 Waiver Order -- like I said, the Waiver Order
18 establishes the right I guess from a legal
19 perspective for us to own the ADLU card and to own
20 the OCD, and it imposes several conditions on the
21 ILEC that were a direct result of various filings
22 by the CLECs under which the ILEC could own those

1 devices. It doesn't talk about whether or not we
2 would have to offer it as a UNE or a service. It
3 does state that we will offer a wholesale broadband
4 service for a period of time. That was one of the
5 conditions under which the waiver was granted, but
6 our reliance on whether it's a service or UNE is
7 much more than just a waiver order.

8 Q. Okay. It does require you to at least
9 offer the Pronto as a service, right?

10 A. Right.

11 Q. It does do that?

12 A. Yes, it does.

13 Q. For how long?

14 A. I believe through the expiration of the
15 Ameritech merger conditions.

16 Q. And do you know when those can expire
17 just by the passage of time?

18 A. I believe it was in 2003 at some point.
19 I'm not sure of the exact date.

20 Q. Isn't it 42 months after the merger
21 closed?

22 A. I believe that's true.

1 Q. Which was when?

2 A. I don't remember the exact date the
3 merger closed, but 42 months from there would be
4 about accurate.

5 JUDGE WOODS: Would be when?

6 A. 42 months from whatever that date was.

7 Q. October '99?

8 A. Okay. That's fair, so October 2003.

9 Q. Well, that's 42 months actually.

10 A. Oh, okay, so three and a half years.

11 Q. Yeah, three and half years.

12 A. Okay, so.

13 Q. April of 2003?

14 A. Sounds about right.

15 Q. Okay.

16 All right. Now, you quote extensively
17 from that order in your testimony, do you not?

18 A. Yes, I do.

19 Q. Okay. I want to ask you about what you
20 don't quote. Do you have that with you?

21 A. Yes, I do.

22 Q. Excellent.

1 A. I assumed you were going to ask me about
2 this, so.

3 Q. You know me, Mr. Boyer, don't you?

4 A. (Witness laughs.)

5 Q. All right. You mention the so-called
6 collaboratives, do you not?

7 A. Yes, I do.

8 Q. And I think you're putting this up to
9 the Commission as -- you're trying to get the
10 Commission I think to agree with you that this is
11 reassurance or protection for CLECs' concerns. Is
12 that fair?

13 A. I think that's a fair characterization.

14 Q. Okay. On page 42, that's where --
15 that's the portion of the -- actually 42 and 43 of
16 the Waiver Order, that's the portion that discusses
17 these collaborative sessions. Is that right?

18 A. Yes. That's part of it, yes.

19 Q. Okay. Now, is there anything that you
20 can point us to in these conditions that commits
21 SBC, commits SBC to allow the Project Pronto
22 platform to do all it can do?

1 A. On these particular pages, no. I
2 believe that the order by itself creates a pretty
3 significant expectation on the part of the FCC that
4 SBC at some point in time will deploy additional
5 services.

6 Q. I understand that, but I'm asking you
7 just about the conditions, part of which is this
8 collaborative session. Nothing in there commits
9 you to do what I just asked you. Isn't that right?

10 A. I don't believe nothing commits us
11 firmly to do that, although I believe that the FCC
12 has an expectation that as the technology evolves
13 that SBC will work collaborative with the CLECs to
14 look at the potential of deploying additional
15 services, and if the technical issues that I've
16 talked about in detail in my testimony and that the
17 FCC, in fact, has recognized --

18 JUDGE WOODS: Slower, please.

19 A. I'm sorry. And that, in fact, the FCC
20 has recognized as part of this order can be
21 resolved, that we would deploy additional features.

22 Q. Okay. So the commitment I guess it's

1 fairer to say is to agree to sit down and talk
2 rather than to let the platform do all it can do.
3 Is that fair?

4 A. I would disagree with that
5 characterization.

6 Q. Doesn't SBC retain the unilateral right
7 to be the gatekeeper of technology deployment even
8 under your own conditions?

9 A. I would say that SBC is hosting
10 collaborative sessions, and the ultimate decision
11 about whether or not we're going to deploy
12 additional technology would be SBC's decision.

13 Q. Okay.

14 A. I wouldn't agree with the term
15 gatekeeper, however.

16 Q. Now turn back with me, please, to page
17 25 at paragraph 43. Isn't it true that part of the
18 reason the FCC -- as you read this order, that part
19 of the reason that the FCC granted the waiver was
20 the expectation that there would be an advanced
21 services affiliate in place occupying the same
22 shoes as Rhythms or some other unaffiliated CLEC?

1 A. Well, I would say that the gist of our
2 request was related to the fact that we had to deal
3 with the advanced services affiliate, so the whole
4 order is under the context of that, of the merger
5 conditions.

6 Q. Okay. You see that thought in that
7 paragraph, do you not? The notion that you're
8 granting -- the granting of the request doesn't
9 eliminate the separate affiliate conditions, so
10 there is the discipline I guess that would be
11 available by having AADS occupy the same shoes as
12 Rhythms. Is that fair?

13 A. I would assume so, yes.

14 Q. And I guess conditions would change if
15 you roll AADS back into the company, right?

16 A. I don't know for sure.

17 Q. You don't know for sure. Okay.

18 On the next page, page 44 -- I'm sorry
19 -- paragraph 44, the sentence, you referenced in an
20 answer before that the FCC -- that the order itself
21 has something to say about, as I put it, letting
22 the platform do all it can do, and I want to point

1 you to a sentence here I'm going to read. "We
2 presume that all features, functions, and
3 capabilities made available by the manufacturer are
4 technically and operationally feasible unless
5 persuaded otherwise." Do you see that?

6 A. Yes.

7 Q. Is that what you had in mind when you
8 answered that as you did?

9 A. I'm not sure what you're getting at.

10 Q. You said that even though there wasn't a
11 commitment requirement in the conditions to let the
12 platform do all it can do, that the FCC had spoken
13 about that in the order. Right? Do you remember
14 saying that?

15 A. I do recall saying that.

16 Q. Okay. Is this sentence one of the ones
17 you had in mind when you testified in that fashion?

18 A. I believe this paragraph is one of the
19 sections of the order that I had in mind. I don't
20 know about that specific sentence.

21 Q. Okay. Fair enough.

22 Well, do you see the last sentence of

1 that paragraph 44, the one that says in the event
2 SBC fails to accommodate technically feasible
3 requests or improperly alleges capacity
4 constraints, parties are free to take advantage of
5 the alternative dispute resolution commitment
6 already contained in the merger conditions and file
7 a Section 208 complaint with the Commission
8 alleging a violation of these commitments or to
9 pursue other remedies before any other appropriate
10 authority? Do you see that, Mr. Boyer?

11 A. Yes, I do.

12 Q. Do you think that the ICC qualifies as
13 any other appropriate authority in this
14 circumstance?

15 A. I would assume so.

16 Q. Okay.

17 All right. Now, in paragraph 45 do you
18 see discussions of different quality of service
19 classes?

20 A. Yes.

21 Q. Do you see UBR mentioned there?

22 A. Yes. There it is. Yes.

1 Q. Okay. Do you see the sentence that
2 says: "Although UBR is suitable for high speed
3 Internet access, it is not suited for more
4 bandwidth intensive applications like carrier grade
5 voice-over-DSL"? Do you see that?

6 A. Yes, I do.

7 Q. Do you agree with that?

8 A. Generally. Generally you have to have
9 constant bit rate to do voice-over-DSL.

10 Q. Okay. And then the next sentence says:
11 "Under its final proposal, SBC will offer such
12 existing features as constant bit rate." Do you
13 see that?

14 A. Yes, I do.

15 Q. And are you offering that outside of
16 Illinois right now?

17 A. Outside of Illinois, yes .

18 Q. Do you see anything in here that limits
19 CBRs to 96 kilobits per second?

20 A. I don't see anything in here
21 specifically. However, I will note that the
22 Commission in paragraph 44 that you just mentioned

1 says that we recognize that making available the
2 full features, functions, and capabilities of the
3 equipment may require SBC to resolve unforeseen
4 technical and operational issues. Moreover, we
5 understand that there may be capacity issues and
6 that potentially competitors may seek features that
7 would use much of the available bandwidth of a
8 particular feeder line. It goes further to say we
9 expect that the collaborative process established
10 by SBC would create a forum for exploring these
11 issues, so the FCC throughout this order has
12 recognized that the capacity constraints that I
13 mentioned do, in fact, exist. There's nothing in
14 here that says that those issues don't exist and
15 now we have to offer any service, so I would
16 disagree with that.

17 Q. Okay. Well, do you see the sentence I
18 just read that says under its final proposal, SBC
19 will offer -- the next thing is something -- it
20 says and virtual paths. Do you see that?

21 A. Yes.

22 Q. Aren't you, in fact, in this case

1 refusing to offer virtual paths even though the
2 Commission has ordered you to do so?

3 A. I don't know the context of what they're
4 referring to is virtual paths.

5 Q. Do you know what a virtual path is?

6 A. I know what a permanent virtual path is.
7 I do know what a virtual path is. There's several
8 different meanings that that particular term could
9 have. There's a technical meaning of permanent
10 virtual path within an ATM network. There's also
11 virtual circuits. They have it in quotes, so I
12 can't say for sure what exactly they're referring
13 to.

14 Q. Do you think they mean something other
15 than a PVP? Is that your testimony?

16 A. I don't know what they mean.

17 Q. Well, what did SBC commit to? Because
18 it says under its final proposal, which I take it
19 to mean SBC's proposal, SBC will offer, will offer,
20 not may offer, virtual paths.

21 A. I believe that our commitment is
22 attached to the order.

1 Q. Not to my copy, unfortunately.

2 A. On page 37.

3 Q. Well, actually I think if you look at
4 the footnote, it's to a SBC ex parte. Footnote 132
5 at the end of that sentence refers to an SBC July
6 13, 2000 ex parte at 5 to 6. So it's not in the
7 order they're talking about. It's some other
8 document. Do you know what SBC committed in that
9 ex parte, Mr. Boyer?

10 A. As part of that ex parte process the
11 voluntary commitments that are attached are what
12 were discussed.

13 Q. No, no, no. Do you know what's on pages
14 5 to 6 of SBC's July 13, 2000 ex parte?

15 A. I don't know for certain, but all of the
16 information in these commitments were attached.
17 That's what the ex partes were about.

18 Q. Do you have the company's July 13, 2000
19 ex parte with you today, Mr. Boyer?

20 A. No, I don't.

21 MR. BOWEN: Does counsel have it available at
22 the counsel table?

1 MR. LIVINGSTON: No, I don't have it.

2 MR. BOWEN: Okay. Can I ask as a record
3 request that you produce that, please?

4 MR. LIVINGSTON: It's a public document, and I
5 presume you've had the Pronto Waiver Order for
6 quite awhile if you wanted that. It's been
7 publicly available for -- since 2000.

8 MR. BOWEN: Your Honor, it was this witness
9 that raised the possibility that the term virtual
10 path didn't mean what it appears to mean to the
11 rest of us which is a PVP, and I wanted to know the
12 basis on which he says that because the FCC says
13 virtual path and they cite an SBC ex parte, so it
14 is the witness who has tried to create an ambiguity
15 in plain language, and I'd like to have the
16 document.

17 JUDGE WOODS: I know, but as far as ordering
18 it discovered, I'm not familiar with how difficult
19 it is to obtain ex partes from the FCC. How
20 difficult is it? Is it real difficult?

21 MR. BOWEN: It's not hard. I was just
22 thinking more of timing. I thought they might have

1 it with them or available easily to them so that we
2 could address the issue and close it during these
3 hearings.

4 JUDGE WOODS: Okay. Well, I think the answer
5 is they don't have it with them.

6 MR. LIVINGSTON: No, we don't have it, and it
7 was obviously throughout this ten-month docket an
8 iterative process that resulted in the conditions
9 which are attached to the order which are obviously
10 the most reflective thing, the most accurate
11 reflection of what the FCC thought we were
12 committing to because that's what they were
13 approving.

14 MR. BOWEN: Well, let's do it this way.

15 MR. LIVINGSTON: And I would certainly
16 disagree with the comment that something that's
17 lower case "virtual path" means upper case
18 Permanent Virtual Path to everybody in this room
19 because it doesn't.

20 MR. BOWEN: Well, Your Honor, perhaps we can
21 resolve this simply by -- I mean we can certainly
22 obtain a copy of this and we can brief the issue.

1 JUDGE WOODS: Okay.

2 MR. BOWEN: It says what it says, and I
3 suggest to counsel and to Your Honor that it is not
4 the whole series. A specific document is referred
5 to here, so that we'll get the document and we'll
6 brief it, and if we need to we'll attach the
7 document to the brief so we can see what it was.

8 JUDGE WOODS: That will be fine.

9 MR. BOWEN: Okay.

10 Q. Okay. Now, you've mentioned several
11 times and next in your testimony here at page 11
12 you talk about the capacity concerns.

13 A. Right.

14 Q. One of which is that all the capacity of
15 an OC3c will be used up by your implementation of
16 the Commission's ordered outcomes in this case. Is
17 that fair?

18 A. I don't believe I state specifically
19 that all of the capacity would be utilized. I
20 don't think I say that.

21 Q. I thought you're saying, well, gee, if
22 the Commission's order is --

1 A. Oh, I'm sorry; I'm sorry.

2 Q. -- put into effect, we've got to put in
3 more OCDs. They're going to occupy all of the OC3c
4 capacity. You've got to add more RTs per
5 Mr. Keown's testimony. Isn't that what you're
6 saying here, Mr. Boyer?

7 A. Yes. I apologize. I didn't understand
8 the question, but generally speaking I'm saying
9 that the Commission's order in this case if it were
10 implemented would create a scenario under which
11 that would happen in those several instances, yes.

12 Q. Okay. Isn't it a fact that the
13 company's own internal concerns about OC3c capacity
14 are exactly the opposite of those you're expressing
15 publicly here?

16 A. I don't know what internal concerns
17 you're referring to.

18 Q. Okay. Isn't it a fact that the
19 company's real concern about OC3cs is that they
20 will be very lightly loaded, not that they'll be
21 out of capacity?

22 A. I don't know if that is a correct

1 characterization of our concern. I do know that
2 there will be situations within which, as we ramp
3 up Project Pronto, that the OC3cs will, in fact, be
4 lightly loaded in some instances because obviously
5 if you put an OC3 out to a location, until you get
6 enough customers, until you have enough individuals
7 using ADSL over that architecture, that OC3 is
8 dedicated to ADSL, so for quite a long period it
9 will be fairly lightly loaded until you have enough
10 customers out there. So that could be a concern.
11 I don't know for sure if that's the primary
12 concern.

13 Q. Isn't that a concern that the company
14 internally has expressed repeatedly in written
15 documents?

16 A. I've had discussions with individuals in
17 the company about OC3s being lightly loaded. I
18 don't know what the significance of that would be.

19 Q. Well, I guess it would be that it's
20 directly contrary with your claims about being out
21 of capacity on OC3c. Wouldn't that true?

22 A. No, it's different. It's different

1 because what I testified to is that if you do
2 things like constant bit rate, that will chew up
3 the capacity. If you do things like SDSL or
4 G.SHDSL, you will chew up the capacity. Under the
5 existing architecture, because it's unspecified bit
6 rate, there's no dedication of bandwidth. I mean
7 I've gone through this in detail in my direct
8 testimony that if you offer -- if you use
9 unspecified bit rate, you can offer services to
10 even more than the 672 potential customers that the
11 architecture can support because the OC3 pipe for
12 that particular service is relatively fat. There's
13 plenty of bandwidth to support unspecified bit
14 rate, but when you move from unspecified bit rate
15 to constant bit rate, it doesn't take much to
16 create a scenario in which that capacity is
17 exhausted. I mean constant bit rate is essentially
18 going from an ATM network to what I would
19 characterize it as as almost being like a TDN
20 network. You're guaranteeing paths. You're
21 guaranteeing channels, so you're chewing up much
22 more of that bandwidth, so it's a different

1 situation, but those documents you're referring to
2 is what the bandwidth would be under the current
3 offering.

4 Q. Well, you've talked repeatedly about
5 chewing up bandwidth, Mr. Boyer. Is this a scarce
6 resource like oil, for example?

7 MR. LIVINGSTON: You're going to have to slow
8 down or you're going to chew up the most valuable
9 asset in this court room, in the hearing room,
10 which is the court reporter.

11 I'm sorry to interrupt.

12 MR. BOWEN: No, that's all right.

13 MR. LIVINGSTON: Please state your question
14 again, please.

15 Q. Do you view bandwidths on the fiber
16 systems as being a scarce resource, Mr. Boyer?

17 A. I would view bandwidth as being
18 relatively -- as being a pretty valuable resource
19 in this situation because there is not -- the
20 bandwidth is limited.

21 Q. I didn't say valuable. I said scarce.
22 Do you view it as a scarce resource?

1 A. I don't know what you're referring to by
2 scarce.

3 Q. Limited in capacity and not possible to
4 expand.

5 A. I would say that it is limited in
6 capacity and it's very difficult to expand.

7 Q. All right. So if I look at your
8 documents, the actual written documents inside the
9 company, I'm not going to see any concerns
10 expressed that are the reverse of yours; that is,
11 that the big concern is that the OC3cs will be very
12 lightly loaded. Is that your testimony?

13 A. I said earlier that under the current
14 architecture the OC3cs would, in fact, in some
15 situations be lightly loaded, so those documents --
16 there are probably documents that exist that
17 discuss that issue.

18 Q. And would that be a possible reason why
19 -- because of that light loading why you might have
20 chosen to daisy chain the CBAs initially?

21 A. Yes, it's distinctly possible. Again,
22 as I discuss, if you're offering high-speed

1 Internet access with a UBR class of service, just
2 generally speaking you don't need substantially
3 more than one OC3 to service 672 customers.

4 Q. Well, how do you think it is that the
5 company had planned to realize the announced
6 intentions of SBC in the Investor Briefing to
7 deploy voice-over-DSL? It wasn't going to use UBR,
8 was it?

9 A. I don't know for sure under the context
10 of the Investor Briefing, but I would say that in
11 order to do voice-over-DSL you typically need a CBR
12 class of service.

13 Q. Okay. Well, then isn't it fair to
14 conclude that the company has always intended to
15 use Project Pronto not just for UBR but also for
16 other class of services, classes of service,
17 including CBR?

18 A. I would say that the company originally
19 intended for the architecture to be able to support
20 many services. However, the expectation would have
21 been at the time that the architecture would evolve
22 to support them. I don't think there was any

1 statement then that we would offer CBR under the
2 current constraints.

3 Q. So your testimony is that you think the
4 company meant to indicate that it was going to
5 offer the Pronto equivalent of Internet telephony,
6 meaning voice over UBR on the platform?

7 MR. LIVINGSTON: That mischaracterizes his
8 testimony. I object.

9 JUDGE WOODS: I think he asked him a question,
10 is that what he meant.

11 A. No.

12 Q. Okay.

13 A. No.

14 Q. Isn't it a fact that you would -- that
15 the company would have had to have had in mind CBRs
16 when it announced to the world in October of '99
17 that it planned to use Project Pronto for
18 voice-over-DSL?

19 A. I think that, in my opinion, the
20 company's expectation was that as Project Pronto
21 evolved, as the architecture evolved and became
22 capable of supporting things like voice-over-DSL,

1 that the company would offer the services.

2 However, in my opinion, it's irrelevant what
3 happened in 1999 because, as we've talked about
4 before, the architecture has not gotten to that
5 point, so it doesn't service it today.

6 Q. Okay. How will the architecture evolve,
7 as you use the term, in your opinion, on a going -
8 forward basis so that it can offer voice-over-DSL?
9 It hasn't happened yet, right?

10 A. No, not to my knowledge.

11 Q. What's the next step which will then
12 allow the promise in the Investor Briefing to be
13 realized?

14 A. You would have to have a situation where
15 you had additional bandwidth available to support
16 higher grade CBR, or, conversely, if you want it to
17 do voice-over-DSL using the 96 kilobit CBR, you
18 could do that today.

19 Q. Okay. On page 13, lines 10 and 11, the
20 context here is you're discussing some of the
21 options available to CLECs. Do you see that?

22 A. Yes, I do.

1 Q. Absent Project Pronto deployment. Do
2 you see that?

3 A. Yes.

4 Q. And there you talk about optical
5 subloops. Do you see that? Line 11?

6 A. Yes.

7 Q. And the presumption here is that we
8 would put a DSLAM out at the RT location. Correct?

9 A. Right.

10 Q. What's an optical subloop, Mr. Boyer?

11 A. Some form of fiber transport from the RT
12 back to the office.

13 Q. What form of fiber transport back to the
14 office?

15 A. I was thinking specifically of an OC3.

16 Q. And is there in your mind any technical
17 limit that says that you can't provide optical
18 subloops below that level?

19 JUDGE WOODS: Of what?

20 Q. Below that level? I mean by optical do
21 you mean OC3 and above?

22 A. OCh.

1 Q. Okay.

2 I take it that you've never done any
3 analysis yourself of any of the economics of the
4 suggestions you're making here. Is that fair?

5 A. I've done some brief looks at what it
6 would cost, what the various elements would cost,
7 copper subloops, optical subloops, and DSLAMs.

8 Q. Okay. Well, let's do this just very
9 quickly, please. You're suggesting here that we
10 could put a DSLAM out in the field, right, say at
11 the RT?

12 A. Yes.

13 Q. And we could use your copper subloops
14 from there. Right?

15 A. Yes.

16 Q. Via the ECS or something like that,
17 right?

18 A. Some means of access.

19 Q. Okay. And this is a DSLAM either within
20 your premises or next to it? Right?

21 A. Right.

22 Q. Okay. And then we get back to some node

1 or switching location via your dark fiber, your
2 optical subloops which you define to be OC3s, or by
3 deploying our own fiber or getting fiber from
4 someplace else. Right?

5 A. Right. You could also use a DS3 type of
6 transport or even a DS1 I guess if your DSLAM
7 supported it.

8 Q. And where will we get that from, the DS3
9 or DS1? From you?

10 A. You could get it from us or from someone
11 else.

12 Q. And we get that by handing you off a DS1
13 or a DS3 level signal at the RT. Is that right?

14 A. Wherever your DSLAMs are.

15 Q. Well, let's assume that it's near or
16 next to your RT. That's how that would work?

17 A. I would assume.

18 Q. Okay. Well, maximum served capacity of
19 an RT is 2,000 lines, 2,016 lines. Right?

20 A. If you assume a 2016 cabinet, if we work
21 under that assumption.

22 Q. I don't assume any cabinet. I want to

1 assume a fully configured LiteSpan with nine
2 channel bank assemblies. That's 2,016, right?

3 A. Fully configured in the case of a
4 cabinet, yes.

5 Q. Okay.

6 A. There are CEVs and huts where we may
7 have more or less channel banks.

8 Q. More than nine?

9 A. I can't think of more than nine, but
10 there are situations where we have more DSL channel
11 banks in some of those locations.

12 Q. Okay. Well, for example, you know about
13 the Lucent cabinet, right? 82G?

14 A. I've heard of it.

15 Q. Okay. That will handle a LiteSpan with
16 five, not three, CBAs with DSL cards, right?

17 JUDGE WOODS: With DSL cards?

18 Q. DSL cards. Right?

19 A. I assume so.

20 Q. Okay. Well, let's just stick with
21 roughly a 2,000 maximum capacity RT location.

22 Okay?

1 A. Okay.

2 Q. Give me a notion of -- I mean that's the
3 biggest it can be in a cabinet, but give me a
4 notion of the average number of served lines from
5 an RT in Ameritech territory. It won't be 2,000,
6 right? It will be something what? 1,000? 1,500?

7 A. Probably something less than 2,000. I'm
8 not sure what the exact number would be.

9 Q. Well, can we work with 1,500 as a
10 representative number?

11 A. Sure.

12 Q. Okay. And what do you expect the total
13 DSL take rate to be for all takers of that 1,500?

14 A. At the present time?

15 Q. Yeah.

16 A. It would just be a guess. Somewhere
17 between 5 and 10 percent maybe.

18 Q. Well, it would be more than a guess,
19 wouldn't it? Haven't you done internal analyses
20 which estimate the take rate for DSL?

21 A. Yes.

22 Q. So give me more than a guess. Give me

1 your estimate of the take rate for DSL, all takers
2 total, the percentage of take rate.

3 A. I don't remember the specific figure. I
4 would assume it's somewhere between 5 and 10
5 percent for this particular year.

6 Q. All right. Let's assume it's the top of
7 that range, 10 percent. Okay? That's all takers,
8 right?

9 A. Okay.

10 Q. Okay. On a 1,500 served line RT, that's
11 what? 150 total lines using DSL?

12 A. Yes.

13 Q. And what do you assume of that 10
14 percent that Rhythms might get?

15 A. I have no idea.

16 Q. Aren't you aware of any internal
17 analyses which estimate the CLEC portion of the
18 total take rate, Mr. Boyer?

19 A. I have seen some internal analyses that
20 look at that issue.

21 Q. Okay. And what does that analysis
22 indicate in terms of individual CLEC non-AADS take

1 rates as a percentage?

2 A. I don't remember specifically what the
3 number was.

4 Q. I thought you were in product marketing
5 on this product.

6 A. I was, but you're referring to a
7 specific document.

8 JUDGE WOODS: I didn't follow you.

9 A. He's asking me if I was in product
10 marketing. Well, I don't know what the specific
11 number was.

12 JUDGE WOODS: Slower, please.

13 A. I don't remember. I haven't seen the
14 document in months.

15 Q. For months. Well, would it be
16 reasonable to assume that we might get 10 percent
17 of the DSL take rate?

18 A. I don't know.

19 Q. You recall nothing at all about CLEC
20 take rates sitting here today. Is that your
21 testimony?

22 A. I've seen some percentages on CLEC take

1 rates. I just don't remember what the exact
2 percentages were.

3 Q. I'm not asking for the exact
4 percentages. I'm asking for a working number that
5 we can talk about. Can we talk about us getting 10
6 percent of the total DSL lines out there, as
7 Rhythms?

8 A. I would say that the CLEC market share
9 might be between, you know, somewhere around 40
10 percent maybe. So if you took that figure and
11 figured Rhythms got a portion of that 40 percent,
12 whatever that percentage was, so I guess it's
13 possible it could be 10 percent.

14 Q. Okay. Well, doesn't Mr. Keown's
15 analysis assume three to five CLECs per RT?

16 A. That's my understanding.

17 Q. Okay. So if we take 40 percent divided
18 by 3 to 5, I get 10 percent, right?

19 A. Sure.

20 Q. Right?

21 A. Yeah, sure.

22 Q. Okay. All right. So we've got 1,500

1 total customers, 150 DSL customers, and then 15
2 Rhythms customers in my example. Right?

3 A. I'm sorry. Could you repeat that?

4 Q. Yeah. A LiteSpan 2000 configured with
5 1,500 working lines using your -- the top end of
6 your DSL take rate for all comers of 10 percent
7 gets me to 150 DSL services, and then using
8 Rhythms' portion of that at 10 percent gets us 15
9 lines. Is that right?

10 A. That would seem to make sense, yeah.

11 Q. Okay. So from this one RT then let's
12 talk about what it would take to serve those 15
13 customers. We've got to put a DSLAM out there per
14 your suggestion here. Can we work with the Sprint
15 witness's estimate of \$130,000 to do that? Is that
16 fair?

17 A. I would disagree with that assessment,
18 but if that's what you want to use in a
19 hypothetical situation.

20 Q. Well, your fellow witness Ms. Aron uses
21 that as a good number, doesn't she?

22 MR. LIVINGSTON: That's a mischaracterization

1 of Debra Aron's testimony. I object.

2 Q. All right. Let's just use \$130,000 as a
3 working number. Can we?

4 A. Okay.

5 Q. Now, how much -- so that's the cost for
6 the DSLAM. How much will it cost to get our own
7 fiber laid back to the central office do you think?

8 A. I'm not sure if that 130,000 was just
9 the cost of a DSLAM.

10 Q. All right. Let's assume that's it's
11 \$130,000 from -- the Sprint testimony is the
12 installed cost of the DSLAM only, that is the
13 equipment, the shipping, the labor, the
14 installation, but does not include any of the
15 facilities to get from the RT location, the DSLAM,
16 back to the central office. Okay?

17 A. Hypothetically?

18 Q. Yes. How much will it cost to -- for
19 Rhythms to lay fiber back to the central office?

20 A. I don't know. I honestly don't know
21 what Rhythms' cost would be to lay fiber.

22 Q. But I thought you said you've done some

1 analyses of proving in your options or estimating
2 the cost of your options you're suggesting here.

3 A. What I've done is I've looked at what
4 the cost for an unbundled subloop DS3 would be from
5 our RT location back to the central office. That's
6 common knowledge. We have that published in --

7 JUDGE WOODS: Slower, please.

8 A. I'm sorry. We have that published in
9 the generic interconnection agreement in --

10 JUDGE WOODS: That's not slower.

11 A. We have that published in the generic
12 interconnection agreement in every state that we
13 offer it.

14 Q. Okay. And so give me a rough average
15 number of what a DS3 would cost. I take it you're
16 agreeing that under the conditions we have here
17 that putting our own fiber in would not be
18 economic. Is that fair?

19 A. I don't know what the cost would be to
20 put your own fiber in, so I really can't say one
21 way or the other.

22 Q. Well, if we have 15 customers and we've

1 already spent \$130,000 for the DSLAM installation,
2 how much is that per customer right there?

3 A. In terms of -- I don't know.

4 Q. Almost \$10,000 a customer?

5 A. You have to divide it.

6 Q. Isn't that almost \$10,000 a customer
7 just for the DSLAM?

8 A. Makes sense.

9 Q. Okay. So do you think it's even
10 conceivable that then to lay fiber to serve those
11 15 customers would make it still economic to do so?

12 A. I've stated before that I believe that
13 it would depend on the take rate. Fifteen
14 customers?

15 Q. I'm asking you to assume our whole
16 discussion we've just had.

17 A. Right.

18 Q. Fifteen customers for that one RT. All
19 right?

20 A. If it was 15 customers and I was running
21 the business, I wouldn't spend \$130,000 to get
22 access to them, but, again, you're making an

1 assumption of a low DSL take rate in 2001. That
2 take rate is considered to expand exponentially
3 over the next three to four years, so having 15
4 customers I would view as being a relatively low,
5 low number. That number should multiply by several
6 factors over the next several years.

7 Q. Oh, your number -- our math here was
8 what? Just for the year 2000?

9 A. You specifically mentioned in your
10 question at this present time, which is 2001.

11 Q. All right. Then come back with me to
12 1,500 served customers. What's the fully mature
13 take -- DSL take rate that you estimate on that
14 platform if it's not 10 percent?

15 A. I've seen estimates that DSL take rates
16 by 2005 could be as high as 40 to -- 40 percent, 40
17 to 45 percent.

18 Q. Okay. 40 percent, not 10 percent.
19 Okay.

20 A. I was responding to your specific
21 question.

22 Q. I understand. So that would be 600

1 total customers, not 150. Right?

2 A. Right.

3 Q. Okay. And can we use the same CLEC

4 penetration percentage as before?

5 A. If you want. That's hypothetically?

6 Q. Yeah. Is that fair to do that?

7 A. Sure.

8 Q. That is we'll still get our same percent

9 of a larger total?

10 A. Assume 40 percent and the same breakdown

11 as before, sure.

12 Q. Okay. So I still get 10 percent of 600

13 now, and that's 60, right?

14 A. Yes.

15 Q. Okay. And that's the mature served

16 number of lines in my hypothetical. Right? Not

17 the first year, but mature, right?

18 A. I would say through approximately 2004,

19 2005.

20 Q. Okay. Okay. So how much is that per

21 customer just for the DSLAM, 60 customers,

22 \$130,000?

1 A. 2,500, 2,000. I'd have to do the math
2 again.

3 Q. Okay. Is that economic in your view?

4 A. It's possible.

5 Q. Is it economic in your view?

6 A. It would depend upon what the life of
7 the DSLAM would be. I mean you'd have to look at
8 over how much time period the asset would be
9 depreciated over and determine how much money you
10 could make over the services you were offering over
11 that asset, and it's distinctly possible that that
12 could be economic.

13 Q. \$2,000 per customer just for the DSLAM.
14 Right. Okay.

15 MR. LIVINGSTON: Move to strike the comment.
16 It wasn't a question. It was an editorial comment.

17 JUDGE WOODS: Is this a good place to break?

18 MR. BOWEN: I think so, Your Honor.

19 JUDGE WOODS: Okay. Let's take lunch.

20 MR. LIVINGSTON: Your Honor?

21 JUDGE WOODS: Yes.

22 MR. LIVINGSTON: Before we break, could I

1 correct a dim-witted omission on my part? Could I
2 move the admission of Ameritech Exhibits 4.0 and
3 4.1?

4 JUDGE WOODS: Objections?

5 MR. BOWEN: No objection.

6 JUDGE WOODS: They're admitted without
7 objection.

8 (Whereupon Ameritech
9 Illinois Exhibits 4.0 and
10 4.1 were received into
11 evidence.)

12 JUDGE WOODS: Ms. Mann-Stadt, are you going to
13 be here after lunch?

14 MS. MANN-STADT: Yes, I will.

15 JUDGE WOODS: Okay. We'll take up that issue
16 about the e-mail after lunch.

17 We'll break for 45 minutes.

18 (Whereupon lunch recess was
19 taken until 2:05 P.M.)

20

21

22

1 A F T E R N O O N S E S S I O N

2 (Whereupon the proceedings
3 were hereinafter
4 stenographically reported by
5 Carla Boehl.)

6 JUDGE WOODS: Mr. Bowen?

7 MR. BOWEN: Thank you, Your Honor.

8 CROSS EXAMINATION (Continued)

9 BY MR. BOWEN:

10 Q. Okay, Mr. Boyer, let's leap ahead in
11 your direct testimony, page 33, please. Do you
12 have that?

13 A. Yeah.

14 Q. Okay. And just for the context of the
15 transcript here, you are beginning your discussion
16 of the specific UNEs ordered by the Commission, are
17 you not?

18 A. Yes.

19 Q. And you are talking here about permanent
20 virtual paths and permanent virtual circuits, also
21 known as PVPs and PVCs, correct?

22 A. Yes.

1 Q. And then you move to the fiber subloop
2 UNE ordered by the Commission at line 18, correct?

3 A. Yes.

4 Q. And your answer says, I am quoting you
5 here, "First, while it might technically be
6 possible to provide a PVC or PVP on an unbundled
7 basis," then you go on?

8 A. Right.

9 Q. Do you think that it is technically
10 possible to provide a PVP or a PVC on an unbundled
11 basis?

12 A. I think that it is possible. I mean, I
13 think it can possibly be done. I don't necessarily
14 agree that that would mean it would be practical or
15 feasible.

16 Q. You say that later on. I am not trying
17 to cut off your answer. I think your answer goes
18 on to say you don't think it's a good idea. I am
19 just trying to clarify that you do believe it is
20 technically possible?

21 A. I think it's possible.

22 Q. Let's then move into one of your

1 capacity concerns, and one I think shared by
2 Mr. Keown and that's the PVP as a UNE in terms of
3 what capacity implications that might find on page
4 34, for example. Are you there, please?

5 A. Sure.

6 Q. Now, throughout your discussion in this
7 page and later pages you are assuming that there is
8 only one PVP per channel bank as supported by the
9 vendor Alcatel, is that right?

10 A. That was one of the things I discussed
11 in my testimony.

12 Q. And then you discuss the implications of
13 that single PVP per CBA, do you not?

14 A. Yes.

15 Q. All right. Are you aware of any planned
16 improvement to be offered by the vendor in terms of
17 the number of PVPs that they will or plan to
18 support per channel bank assembly in future
19 releases of their software?

20 MR. LIVINGSTON: Don't say the exact number.

21 A. I am aware of a planned improvement, yes.

22 Q. Okay. Your counsel is correct; as of

1 right now at least, the actual number of PVPs per
2 CBA is deemed proprietary.

3 A. Oh, I didn't know.

4 MR. LIVINGSTON: That's why I said it.

5 THE WITNESS: Okay.

6 Q. It is more than one, is it not?

7 A. Yes.

8 Q. And you know what the number is, do you
9 not?

10 A. I do generally, yes.

11 Q. We may go on the closed record and
12 discuss that, but isn't it correct that that number
13 will increase in Release 11 of the software?

14 A. That is my understanding when Release 11
15 comes out.

16 Q. Is it your understanding that Release 11
17 is due to be delivered to SBC for testing in August
18 of this year?

19 A. Sounds about right.

20 Q. Okay. And did you know that when you
21 were writing your testimony?

22 A. I knew that Release 11 was planned to be

1 rolled out by Alcatel. I didn't know the specific
2 dates.

3 Q. Well, you knew it was going to be this
4 year, didn't you?

5 A. I had a general assumption that it could
6 be this year, yes.

7 Q. Well, can you tell us why you didn't
8 disclose that fact and give an analysis based on
9 that soon to be reality in your testimony, Mr.
10 Boyer?

11 A. Well, actually, in fact I did on page
12 36.

13 Q. Where is that?

14 A. Last -- line 22, question states, "You
15 mentioned above and that the current situation
16 where a CLEC must be designated an entire channel
17 bank and potentially the entire RT site in
18 conjunction with the PVP, that there are potential
19 implication of this, anticompetitive implications
20 of this offering." And I say, "Are there any such
21 complications with offering a PVP in the scenario
22 where there are multiple PVPs per channel bank."

1 Q. Okay. My question wasn't very artful, I
2 will grant you. Why didn't you tell the Commission
3 that you were aware that your vendor actually was
4 planning a release which would vastly increase the
5 number of PVPs per CBA?

6 A. I think my testimony covers both
7 scenarios, the current scenario and the future
8 scenario.

9 Q. Where do you tell the Commission in your
10 direct testimony that in fact Alcatel is planning
11 to offer more than one CBA per channel bank
12 assembly? Where do you say that directly?

13 A. I don't say that specifically, but I
14 address both situations in my testimony.

15 Q. Well, why didn't you tell the Commission
16 what you knew to be a planned upgrade at the time
17 you wrote your testimony?

18 A. I assumed that the Commission would
19 consider the current situation and the potential
20 future situation. And that is the situation I have
21 outlined here.

22 Q. Why didn't you tell the Commission the

1 full truth of what you knew, that is that your
2 vendor was planning in Release 11 to make more PVPs
3 available to the channel bank?

4 A. I didn't think it was relevant at the
5 time.

6 Q. You weren't trying to mislead the
7 Commission, were you?

8 A. No.

9 Q. All right. So isn't it fair to say that
10 we can in effect, just for purposes of this case,
11 ignore your scenario of the single PVP since by
12 August you will be in tests and by December it's
13 likely you will be deploying?

14 A. I don't think we can. Because, first
15 off, I understand Alcatel stated that it will
16 deliver Release 11 by a date this year, but I think
17 I am not certain that that release is going to
18 actually be made available at that time. And I am
19 certainly not certain if that release is going to
20 be something that we deem -- that we are going to
21 deploy in terms of the PVP functionality, and I
22 don't think anybody can tell you as of right now,

1 just from my discussions with Alcatel, what exactly
2 that offering would offer in terms of PVP in terms
3 of traffic management and other issues. So I don't
4 know for sure whether or not -- I would have to say
5 we haven't looked at the release closely enough for
6 me to say that that offering multiple PVPs per bank
7 would really be a practical solution when that
8 release comes out or not. I don't know.

9 Q. Didn't your company ask for multiple
10 PVPs per channel bank assembly?

11 A. I don't know.

12 Q. Didn't it do so more than a year ago?

13 A. I have no idea whether they did or
14 didn't.

15 Q. Well, how about this, Mr. Boyer, what
16 if -- you heard Mr. Watson's testimony, have you
17 not?

18 A. Yes, I have.

19 Q. What if we commit to what Mr. Watson
20 committed to in his testimony, that is until the
21 Alcatel Litespan Release 11 is deployed, not just
22 tested but deployed, we will not ask for a PVP

1 because to do so would occupy the entire channel
2 bank assembly, and if we did ask for it, we would
3 be willing to pay the full TELRIC implication of
4 doing that? Would that satisfy your concern as you
5 expressed at the beginning of page 34?

6 A. It would address the concern of a CLEC
7 having to dedicate a channel bank. I don't know if
8 it would in my mind make a PVP offering practical,
9 an offering, because of the impact on the band
10 width, but I would agree that it would resolve that
11 initial concern.

12 Q. Okay. And so all the concerns about
13 having to build another RT and put another NGDLC
14 out there and all your concerns about the CLECs
15 gaming the process and occupying PVPs to preclude
16 other carrier's use go away then under my
17 assumptions, don't they?

18 A. In terms of we had -- my assumptions
19 were based on if there was one PVP per channel
20 bank, the CLEC would have two dedicated issues. If
21 there were three channel banks, in order to get to
22 all the RT sites -- I am sorry, all the SAI sites,

1 you would have to basically have all three channel
2 banks which would inevitably lead to a situation
3 where you had to put potentially multiple RTs.
4 Those specific issues that were created by a one
5 PVP per channel bank limitation would essentially
6 go away. It doesn't resolve all the other issues.

7 Q. I understand that. We are taking them
8 one at a time, and you will have a chance to talk
9 about the other issues. But just so we are clear
10 on page 34 to 36, if we agree not to ask, as I
11 said, not to ask for a PVP until Release 11 is
12 deployed or if we did to pay the full TELRIC-based
13 implications of that, then these concerns as far as
14 you are concerned are moot, right?

15 A. I would say the last part of page 35,
16 not 36, through line 27 on 35.

17 Q. I am sorry, okay. Well, all right. On
18 page 36 you are talking about even if there are
19 multiple PVPs per CBA you would have some concerns,
20 right?

21 A. That's true.

22 Q. Now, is this an example of what you

1 characterized live this morning as chewing through
2 or chewing up bandwidth?

3 A. Yes, and actually if I could make one
4 correction, actually I do acknowledge in my
5 testimony that Alcatel is offering multiple PVPs in
6 one of my attachments. In Attachment 6 I have a
7 statement that says, "Furthermore, the PVP solution
8 currently being developed by Alcatel will offer
9 multiple PVPs per channel bank," and then I go
10 through an additional section so.

11 Q. Where is that?

12 A. It's in Attachment 6 to my testimony
13 where I talk about PVPs. I believe, yeah, Schedule
14 CJB-6, if you look at the last paragraph on that
15 attachment, first sentence.

16 Q. I see it, okay. I will ask the question
17 differently. Why did you put it way back there in
18 the attachment?

19 A. The manner in which I wrote it, I guess.

20 Q. Do you have any knowledge of how in
21 other -- I almost said normal -- other ATM
22 implementations besides Litespan, whether it's

1 common or not to have both PVCs and PVPs?

2 A. If somebody was to deploy an interoffice
3 ATM network, you would typically have PVCs and
4 PVPs, I would agree with that.

5 Q. In fact, weren't you the product manager
6 for frame relay and ATM and so forth?

7 A. I worked on several frame relay and ATM
8 issues, yes.

9 Q. And didn't you always see that, not
10 counting Pronto, that the offering consisted of
11 either PVPs or PVCs or both?

12 A. It would depend. Typically, you would
13 see that, interoffice, yes.

14 Q. All right. So I guess you are familiar
15 with some of the reasons why carriers want PVPs, is
16 that fair?

17 A. Yes, I am familiar.

18 Q. Well, for example, if you have, say, an
19 interoffice OC-3 facility a carrier can get, and
20 say it's a regular OC-3 running at 155 megahertz a
21 second, how much -- interoffice, how much of that
22 is usable bandwidth?

1 A. Under your hypothetical, 155 megabits, I
2 guess it would depend on the overhead. But with
3 Pronto we usually talk about it -- I can't speak
4 for sure, depending on the equipment.

5 Q. You don't -- interoffice, you don't need
6 20 megs of overhead in that channel, do you?

7 A. Again, I think it would depend on the
8 equipment itself.

9 Q. Well, the stuff that you were familiar
10 with when you were in that job in terms of
11 providing frame relay and ATM, you didn't need 20
12 megs of overhead, did you?

13 A. I am not certain of the exact number.

14 Q. You had no idea from your experience
15 what the normal overhead is on an OC-3 in your
16 office?

17 A. It would depend on the equipment again.

18 Q. Assume any equipment you want to, Mr.
19 Boyer, I guess supposedly you are familiar with in
20 Ameritechland. How much overhead?

21 A. Again, it would be variable. You are
22 asking for me to give you a number; I don't know a

1 number.

2 Q. I am saying pick any particular vendor
3 you want to that you are familiar with. I don't
4 want the whole range. I want just an example.

5 A. I don't remember any specific numbers.

6 Q. Okay. All right. So let's take an
7 example of a PVP interoffice. Give me a common
8 size of a PVP interoffice, a common ATM PVP in your
9 experience, that a carrier might request.

10 A. In terms of -- my familiarity with what
11 a carrier may request is mostly related to the
12 things we have been talking about for the past year
13 so in relation to Project Pronto. I can assume
14 that what a carrier would normally ask for would be
15 a PVP of sufficient size to provision multiple
16 variations of PVCs within that PVP. What that size
17 would be, I think that would vary depending on the
18 product offering, what you were selling.

19 Q. I thought you were product manager for
20 frame relay and ATM services?

21 A. There is many different product managers
22 that deal with those issues. My responsibility in

1 that area was to deal with the application of ATM
2 and frame relay to the wholesale segment. So and
3 that was several individuals. I had several
4 responsibilities at the time. So I am not as
5 intimately familiar with our retail offerings.

6 Q. All right. Well, what's a common -- you
7 are familiar with central office space DSLAMs and
8 how carriers then send out a signal, a DS3, for
9 example?

10 A. Yes.

11 Q. Is it common to have carriers have
12 approximately a thousand DSL circuits under the
13 DS3?

14 A. Yes, I would agree. That would be one
15 measure, yes.

16 Q. And that's 45 megabits per second,
17 right?

18 A. DS3 is 45 megabits per second, that's
19 correct.

20 Q. All right. So what's a common size of a
21 PVP interoffice for a carrier to ask for? Do you
22 have any idea?

1 A. From a DSLAM --

2 Q. No, not from a DSLAM, just take yourself
3 outside of Project Pronto and DSL. What's a common
4 size of PVP that a carrier would take from
5 Ameritech?

6 A. I would guess that they would ask for
7 whatever they needed to support their service.

8 Q. So there is nothing that requires them
9 to take any particular size of PVP, right?

10 A. Not to my knowledge.

11 Q. Is there any minimum size for a PVP that
12 you are aware of?

13 A. The only thing that I can think of would
14 be you have to have enough to support the service
15 that you are offering. So in theory that could be
16 as low as the bandwidth of that given service.

17 Q. Okay. Well, in your example that you
18 are attaching to your testimony are you using a 30
19 megabit per second PVP, aren't you? I am looking
20 at page 36, actually.

21 A. Yeah, I am sorry, yes, I am.

22 Q. That's pretty good size, isn't it?

1 A. I would say that's a fairly large size.

2 Q. Why don't we talk in terms of say
3 initial entry in the Pronto market, as you have
4 been yourself? Can we talk about that?

5 A. Sure.

6 Q. What if Rhythms asked for, say, a five
7 megabit per second PVP? That's possible, isn't it?

8 A. That's possible.

9 Q. What if Rhythms actually asked for, say,
10 two PVPs that were each five? That's possible,
11 isn't it?

12 A. It's possible to do several different
13 combinations, so yes.

14 Q. Well, what if Rhythms wanted to ask for
15 a PVP that was five megabits per second that was a
16 UBR class quality of service class? That would be
17 possible, right?

18 A. Well, it would be possible to provision
19 multiple service classes through a PVP, but that's
20 possible.

21 Q. We could configure it to be all UBR,
22 right?

1 A. Right, yes.

2 Q. And within that PVP you have what are
3 called PVCs, right?

4 A. Yes.

5 Q. So we could get a five meg PVP and load
6 as we choose, over-subscribe, to use your term,
7 UBRs within that, couldn't we?

8 A. Theoretically.

9 Q. And that would let us control --
10 theoretically or actually, it's possible to do
11 that, isn't it?

12 A. I would say in theory it's possible. It
13 would depend upon -- if we are speaking
14 specifically of the Litespan architecture, again,
15 as I said I am not familiar with all the traffic
16 management issues related to Release 11 and I am
17 not certain how that control would be provided in
18 terms of access to the management systems that
19 would be necessary. But in theory I think that's
20 possible.

21 Q. Well, I don't want to have this be
22 needlessly complicated, Mr. Boyer. I want you to

1 assume that Ameritech is controlling the element
2 manager, the AMS in this case. You said yourself
3 that when you created a CBR PVP or a UBR PVP, the
4 PVP itself is a fixed size, right?

5 A. Yes.

6 Q. Isn't that what you are saying in your
7 testimony here?

8 A. Yes, it would typically be a fixed size.

9 Q. So I am asking you to assume we are
10 asking you for two five megabit per second PVPs,
11 okay?

12 A. Okay.

13 Q. You know what that number is; it won't
14 get any larger, right? It's ours.

15 A. Five megabits.

16 Q. Right.

17 A. All right.

18 Q. Times two?

19 A. Times two, so ten total.

20 Q. Right. There is no traffic management
21 issue there because you can't get any higher than
22 five megabits per PVP?

1 A. I think one of the issues -- and again I
2 am not an expert on Release 11 -- but I think one
3 of the issues with one of the problems with Release
4 11 to my knowledge is that there is no certainty in
5 terms of -- there is no manner for us to guarantee
6 that a CLEC in your hypothetical could be guarantee
7 a five megabits because of the way the management
8 system works. You could actually have a scenario
9 where it goes greater than that or less than that,
10 depending upon the available bandwidth, but I am
11 not an expert on that. Mr. Keown may be able to
12 shed some more light on that issue.

13 Q. Are you testifying that PVPs vary in
14 size?

15 A. PVPs could vary in size if there was no
16 way to manage the actual bandwidth in a packet
17 network to insure that it doesn't get any larger,
18 it doesn't grow. But I am not sure if the Alcatel
19 Release 11 does that or not. If there was a way to
20 maintain it constantly, that could be possible.
21 But there could also be situations where it grows.

22 Q. Your testimony just now, isn't it just

1 pure speculation? You don't know anything about
2 this topic in detail at all, do you?

3 A. I have read things about it, yes, I
4 have.

5 Q. Have you read something that says that
6 for some reason Alcatel's equipment can't maintain
7 a maximum size on a PVP?

8 A. I have had discussions with individuals
9 who have told me that there is no certainty that it
10 can.

11 Q. You think Mr. Keown will know this in
12 detail?

13 A. He may.

14 Q. But you have read nothing, have you, to
15 support that?

16 A. I had had discussions with various
17 individuals who have told me that, that read
18 Alcatel documents all the time.

19 Q. Do you understand my question,
20 Mr. Boyer?

21 A. Yes.

22 Q. Have you read anything to support your

1 assertion?

2 A. No.

3 Q. Well, let's assume then that Alcatel
4 somehow manages to do what every other carrier who
5 has ATM deployed can do which is to manage the size
6 of the PVPs, right? Can you assume that with me?

7 A. I will assume that.

8 Q. Now we are back to a five megabit PVP
9 running UBR. Rhythms can use that to offer
10 internet access services to its customers, right?

11 A. It could.

12 Q. On a PVC basis, right?

13 A. It could provision multiple PVCs over
14 that PVP however you wanted.

15 Q. And that lets Rhythms as an individual
16 carrier actually decide how much to over-subscribe
17 that particular pipe because it's Rhythms' pipe,
18 right?

19 A. Under your hypothetical that would be
20 the case.

21 Q. It could offer a very high grade of
22 internet access service by loading that lightly,

1 right?

2 A. In theory, yes.

3 Q. Or it could offer a more cost effective
4 version of internet access that is loaded very
5 heavily, right?

6 A. You could use it however you wanted to,
7 essentially.

8 Q. All right. And if Rhythms wanted to
9 have the other five megabit PVP set up as a CBR,
10 that's possible, right?

11 A. It's possible.

12 Q. And it could use within that PVP CBRs of
13 any bit rate, right?

14 A. Right. I need help on this. Basically,
15 if you had a PVP of five megabits, you could
16 provision, you could match whatever services you
17 wanted within your CBR, UBR. It would be up to the
18 individual or the company with the PVP to manage
19 the PVCs that went through it. So you could mix
20 and match however you want.

21 Q. And that's in fact what carriers do
22 every day of the week in the interoffice now, isn't

1 it?

2 A. Typically, yes .

3 Q. And would you agree that carriers who do
4 that view that as a major benefit of the
5 technology?

6 A. I would assume so.

7 Q. So if you had three CLECs, each of them
8 hypothetically asking for what I just described to
9 you that Rhythms might ask for, one five meg PVP
10 for this purpose and one five meg for that purpose,
11 you would have 30 megabits per second total, right,
12 four PVPs?

13 A. Under that scenario, yes.

14 Q. Leaving with your overhead assumptions
15 105 megabits for other services, right?

16 A. Under that assumption, yes.

17 Q. So you could have 105 megabits as one
18 PVP that SBC offered just generally under its
19 wholesale broadband service as a UBR, right, as
20 UBRs?

21 A. In your scenario you would generally
22 have -- you would have 30 megabits of band width

1 locked up for the various CLECs using those PVPs
2 and then the rest of the band width would just be
3 available for whomever you have provisioned the
4 existing UBRs through, yes.

5 Q. And could you sell that as part of your
6 wholesale broadband service, right?

7 A. We typically wouldn't sell the band
8 width. We would just sell the existing service and
9 provisioning through it.

10 Q. Well, you could sell your wholesale
11 broadband service and use that 105 megabit chunk to
12 offer UBR PVCs, right?

13 A. It's possible. In fact, we would. But
14 the issue would be that, from my perspective from
15 various discussions I have had with traffic
16 engineers within SBC, that once you allocate more
17 than 20 percent of the bandwidth within the
18 Litespan pipe, just for some other purpose other
19 than UBR traffic, it does create some problems in
20 terms of quality of service for the UBR customers.
21 So I don't know if it's 30 percent, 20 percent of
22 135, if that's greater than that, but that

1 situation could probably present itself. But you
2 would provision the broadband service in the
3 remaining bandwidth, whatever that might be.

4 Q. Well, there isn't any quality of service
5 guarantees on UBR, is there?

6 A. No, it's an available -- available band
7 width assumption.

8 Q. And the net itself can slow down and
9 cause what you thought might be fast paced to be
10 really slow, right?

11 A. Right.

12 Q. And nobody can tell where the slow down
13 might be?

14 A. The bottleneck could be anywhere.

15 Q. And so people are used to occasional
16 slow downs for whatever reason when they get to the
17 internet, aren't they?

18 A. Sure, I would assume so.

19 Q. And I take it that whatever concern the
20 company -- whatever opinion the company might have
21 expressed internally in writing about very lightly
22 loaded OC-3c would actually be somewhat addressed

1 by the fact that Rhythms and Covad and Sprint and
2 somebody else would be willing to commit to paying
3 for 30 megabites -- or, I am sorry, 30 megabits per
4 second worth of through-put. That is, we are
5 helping the capacity load factor of the facility by
6 saying I will pay you for six PVPs, isn't that a
7 good thing?

8 A. I don't necessarily believe that would
9 be the case because of the fact that, again, as I
10 have stated, once you provision more than 20
11 percent of the band width in a constant type of
12 fashion or allocate it constantly as part of a
13 dedicated PVP, it would start to degrade the
14 quality of service you could use for UBR customers.
15 So once you got beyond 20 percent of 135, you would
16 be in a situation where it would sufficiently
17 impact the existing services that I don't know if
18 that would resolve it.

19 So what you are asking is, if you bought
20 that additional band width, would that resolve our
21 concerns. I don't know if that was the case.
22 Because if the manner in which that remaining band

1 width was used was so sufficient that it impacted
2 other services, I don't think we would view that as
3 a viable solution.

4 Q. You said if, didn't you? If that
5 happened you would be concerned?

6 A. If, yes, if it was greater than 20
7 percent of 135, yes, that would be the general
8 breaking point of where that impact would be pretty
9 sufficient.

10 Q. Doesn't that assume that the balance of
11 use could actually make use of more than 105
12 megabits per second of band width?

13 A. I don't think I follow.

14 Q. Well, if you are saying, gee, if you
15 choke me down to 105 megabits of through-put I am
16 going to be impacted because my traffic engineers,
17 who aren't here today, tell me that if you do that
18 I am going to see an effect.

19 A. Right, that's what they are saying.

20 Q. Isn't the implication of that that
21 whatever through-put you expect to need is greater
22 than 105 megabits per second?

1 A. I don't know for sure. I mean
2 typically --

3 Q. Isn't that a logical mandate of your
4 statement?

5 A. I think that in order for us to continue
6 to serve, to offer a UBR service to the full
7 capacity, the full 672 or so customers of the RT
8 site, that we would need 20 percent. At a minimum,
9 if you subtract out 20 percent of 135, which I
10 haven't done the math to know exactly what that
11 figure is, that is what you would need to offer
12 that service with no impact. So whatever that
13 figure is, that's what I would say. Is it 105? I
14 don't know what the number is.

15 Q. Well, 20 percent of 135 is 27.

16 A. Okay. So 108. 108 is what the -- in
17 that case 108 is what we would need at a minimum to
18 continue to service all our UBR customers to the
19 full potential.

20 Q. Okay. Obviously, you talk with
21 engineers. If you take a 10 percent take rate in
22 an RT and assume it's the 1500 average lines,

1 right?

2 A. Okay.

3 Q. 150 customers, right?

4 A. Yes.

5 Q. What's the maximum UBR DSL through-put
6 then for 150 customers if they are all at the same
7 time?

8 A. Whatever -- under the current scenario
9 it's 135 megabits divided by the 150, so whatever
10 that number is that would be in theory what you
11 would be allocating. It could be higher than that.
12 It could be as high as whatever they get when they
13 go on line. So it could be as high as seven or
14 eight megabits.

15 Q. Okay. With respect to the number of
16 cards that you can place in a Project Pronto DLC,
17 what's your testimony? How many -- in a Litespan
18 2016 cabinet how many ADLU cards can you put in
19 there?

20 A. Nine channel banks times 56 slots, so
21 480? Is that it? Whatever nine times 56 is.
22 Sorry, it's not 480m it's about -- I don't know,

1 whatever the number is.

2 Q. How many ADLU cards do you think that
3 you can place under the current support of the
4 vendor in a Litespan 2000 and a Litespan 2016
5 cabinet with nine channel bank assemblies?

6 A. 168.

7 Q. How many cards -- how many customers
8 will those 168 cards serve?

9 A. At the present time it's a two-port card
10 so it would serve 336. In the future when Alcatel
11 does make Release 11 available and if we do deploy
12 it, it would make available four ports per card, so
13 672.

14 Q. So I guess you disagree with Alcatel's
15 chief technology officer then?

16 A. I don't know what Mr. Ransom has said.

17 Q. Well, if I told you that Dr. Ransom
18 testified that the configuration I described would
19 support several hundred more ports than 672, would
20 you disagree with that?

21 A. I heard yesterday that Dr. Ransom had
22 stated that it would support more than 672 because

1 you could place additional DSL cards in some of the
2 other channel banks that were out there. I
3 personally -- that was the first time I had heard
4 of that.

5 MR. LIVINGSTON: A belated objection. It was
6 several hundred more lines; not several hundred
7 more cards.

8 Q. I stand corrected. Counsel is correct.

9 A. And if I might add, I would just add I
10 don't know if that's something that we would, that
11 SBC would, support because we haven't had an
12 opportunity to look at that. So I don't know if we
13 would support that or not, even.

14 Q. Sorry, I can't hear you, Mr. Boyer.

15 A. Sorry. I don't know if that is an
16 option that we would support even though we just
17 found out about it yesterday.

18 Q. Well, you trust the word of the chief
19 technology officer of Alcatel, wouldn't you, if you
20 were this Commission?

21 A. I would generally trust Dr. Ransom's
22 word, yes. However, that doesn't mean that we have

1 taken the additional line cards in those other
2 channel banks and tested that in our lab to insure
3 it doesn't impact other services that we might
4 offer.

5 Q. Okay. Now, you have been talking about
6 a single OC-3c, right, on page 37 here?

7 A. Yes.

8 Q. You already talked about how it's
9 possible to -- I am sorry, strike that. Your
10 normal configuration, at least for your
11 configuration for a number of installations, is to
12 daisy-chain at least the three ADSL capable channel
13 bank assemblies to feed one OC-3c transport
14 facility, right?

15 A. That would be the typical installation.

16 Q. That's not the sole thing you can do,
17 but that's your typical, right?

18 A. Right, that's not the only thing.

19 Q. And that's what's known as
20 daisy-chaining the channel bank assemblies, right?

21 A. One way of putting it.

22 Q. Isn't that how Alcatel puts it?

1 A. That's generally how we talk about it
2 and Alcatel talks about it, to my knowledge.

3 Q. In all of your examples here about using
4 up more than 20 percent of the band width, they all
5 presume a single OC-3c facility from that NGDLC,
6 don't they?

7 A. Yes.

8 Q. Why haven't you brought forward an
9 analysis that's based on undaisy-chaining a CBA and
10 talked about PVPs in that context?

11 A. Because in my opinion that's not a
12 practical solution because you would have so many
13 OC-3s inbound from the RT sites to the OCD that it
14 would require us to, the ILEC, to purchase multiple
15 OCDs in an office which I personally do not view as
16 an economic solution.

17 Q. Okay. But there is no technical bar as
18 far as you are concerned, is there? You can
19 undaisy-chain the CBAs?

20 A. You could undaisy-chain them, that's
21 true.

22 Q. You testified to that again on live

1 direct this morning, didn't you?

2 A. If I recall correctly, yes, I did.

3 Q. You talked about undaisy-chaining all
4 three. It is possible, is it not, to undaisy-chain
5 so that you would have two still daisy-chained and
6 one not?

7 A. I would assume it's possible, yes.

8 Q. And that would use less fiber than
9 unchaining all three, wouldn't it?

10 A. It would use one less fiber and one less
11 port on the OCD.

12 Q. One less fiber or two less fibers?

13 A. I am trying to think here. If you had
14 one fiber with OC-3 in all three banks and you
15 broke the chain and you added additional fiber to
16 two banks, you would have one additional fiber.

17 Q. How many fibers normally serve the ATM
18 ABCUs?

19 A. I believe it's one fiber for the OC-3
20 and one for a protect path. So I guess it would be
21 two.

22 Q. One active and one protect?

1 A. I think that's how it is deployed. I
2 don't remember for sure.

3 Q. Isn't it actually correct that you and
4 every other carrier out there deploys fibers in
5 pairs, meaning two or four, with one transmit and
6 one receive in an unprotected system and one
7 transmit active and one standby and one receive
8 active and standby in a four-fiber configuration?

9 A. I would say that's generally true.

10 Q. So we aren't talking about one fiber
11 ever, are we?

12 A. No, generally not. There would be more
13 fiber going to that particular RT center.

14 Q. We are talking about two at a time,
15 right?

16 A. Usually.

17 Q. Well, what happens if you expand your
18 perspective beyond a single OC-3c and talk about
19 PVPs? Does that help our example at all?

20 A. It would help to a certain extent
21 because you would have additional band width,
22 essentially. So it would depend. I mean, at that

1 point you could use 20 percent of two OC-3s versus
2 20 percent of one.

3 Q. Or you could use 20 percent of three
4 OC-3s, right?

5 A. Conceivably.

6 Q. And if you did that, then your concern
7 expressed just now about somehow impacting the UBR
8 traffic would go away, right?

9 A. If we were to break the chain and
10 allocate additional fibers into the OCD, it would
11 create more band width which could be one way of
12 alleviating that concern.

13 Q. Isn't it a fact that as traffic grows
14 over the Project Pronto useful life, what we have
15 discussed just now is a normal and natural way to
16 increase through-put capacity on that system? That
17 is, to undaisy-chain the CBAs when needed?

18 A. I don't know if that's something that we
19 would normally do. That's basically the only way
20 to increase the band width. So if somebody made a
21 decision to do that, that would be the way to do
22 it.

1 Q. You don't think that your fiber
2 constrained, do you?

3 A. As long as the fiber is out there, I
4 don't think.

5 Q. Do you know anything at all about feeder
6 plant design?

7 A. Only what people have told me, all
8 right.

9 Q. Well, okay, isn't it correct that normal
10 feeder plant design calls for a major feeder
11 obstacle on the four points in the company.

12 A. Typically.

13 Q. Isn't it correct that SBC has deployed
14 the fiber build that's part of Project Pronto in
15 that fashion?

16 A. One would assume so, if that's a
17 standard policy.

18 Q. Isn't it true that the normal fiber size
19 for the Pronto build is either 400 fibers or 200
20 fibers plus on each compass point?

21 A. I actually believe that depending on the
22 circumstances I think it's 216 and then possibly

1 416. I think that's the number.

2 Q. Okay. And there is an average of 20 RTs
3 per central office in the diagram given to the FCC,
4 right?

5 A. Approximately, 16 to 24 so you could
6 assume 20.

7 Q. Again, using averages that's about five
8 RTs per quadrant, right?

9 A. Yes, four quadrants, yes.

10 Q. So each of those five on average, each
11 of those five RTs, is getting either 40 or 80 fiber
12 going to it?

13 A. I am trying to think. It's 216, divide
14 that by four, that would be.

15 MR. LIVINGSTON: By five.

16 THE WITNESS: By five, okay, so that would be
17 what, 40, give or take.

18 Q. So either 40 or 80 fibers are going to
19 each RT on average, right?

20 A. They are being deployed to that area,
21 yes.

22 Q. And you need four for the TDM side,

1 right?

2 A. Right.

3 Q. And you need two for the ATM side,
4 right?

5 A. Right.

6 Q. Let's give you two for maintenance,
7 testing. That's eight, right?

8 A. Right.

9 Q. So on average you have got either 32 or
10 52 spare fibers, right?

11 A. I don't know if I would say that they
12 are spare because they might be used for some other
13 purpose, but the fiber would certainly be there.

14 Q. This is on the initial deployment. This
15 is not on some growth path. This is on the initial
16 fiber deployment of Pronto, correct?

17 A. Yes.

18 Q. So there is no fiber constraint, is
19 there?

20 A. I would say that if you wanted to use
21 the fiber for that particular purpose, a lot of
22 them would be there. I can't say all or how

1 often.

2 Q. You could say nearly all, couldn't you?

3 A. My guess would be if it is not being
4 used for some other purpose, it would be there.

5 Q. Fair enough. Let's talk about the OCD
6 now. This is an ATM switch, right?

7 A. Yes, it is.

8 Q. Give me a sense of -- you have seen
9 Class 5 switches, right?

10 A. Right.

11 Q. Well, I take it that you must be
12 concerned that there must be some space concerns
13 here. Is this thing as big as a Class 5 switch?

14 A. No.

15 Q. How big is a Class 5 switch? How much
16 floor space does it occupy?

17 A. I have no idea. I have been in several
18 central offices, and a lot of times it's a pretty
19 large piece of equipment.

20 Q. It's the whole center of the floor,
21 right?

22 A. Yeah, pretty much.

1 Q. It can be like 20, 30 or 40 feet on a
2 side?

3 A. It can be pretty massive.

4 Q. Let's talk about the Cisco 6400. That's
5 what you are putting in as an OCD, right?

6 A. In Ameritech, yes.

7 Q. Isn't that thing fit into a standard
8 telecommunications rack that's about two feet wide?

9 A. I am not certain on the actual
10 dimensions, but I do believe that it does fit into
11 a standard rack.

12 Q. In fact, can't you install not one but
13 two Cisco routers in a single rack space?

14 A. I am not certain on that particular
15 question.

16 Q. Have you seen the standard configuration
17 diagrams for your OCDs, Mr. Boyer?

18 A. I have seen them.

19 Q. Don't they show Cisco routers mounted
20 one above the other?

21 A. I don't recall the exact picture in the
22 diagrams.

1 Q. Well, they are less than half a rack
2 high, aren't they?

3 A. I would assume so.

4 Q. Have you seen one?

5 A. Yes, I have.

6 Q. So they are less than half a rack high,
7 aren't they?

8 A. Typically.

9 Q. So this can't be a space thing, right?
10 If you can put four OCDs in two standard two-foot
11 wide racks, it is not a space issue, is it?

12 A. No, I don't think it's generally a space
13 issue.

14 Q. So there is some other constraint here
15 that's working, right? The OCDs have cards, right,
16 that slide in there?

17 A. Yes.

18 Q. And how many OC-3c ports per card for
19 the Cisco?

20 A. OC-3c cards for the Cisco, I believe
21 that there are -- try to make sure.

22 Q. I am sorry, I meant to ask, how many

1 OC-3c ports per card.

2 A. Oh, okay, for the Cisco I believe it's
3 two per card.

4 Q. And then how many card slots are there?

5 A. For the Cisco I think it's 16.

6 Q. Okay. All right. So do you recall from
7 looking at the documents that you have looked at
8 whether or not there are three base configurations
9 of OCDs, meaning initial configurations?

10 A. I am sure there is multiple
11 configurations of OCDs because there are different
12 circumstances and different scenarios.

13 Q. Isn't there a base configuration which
14 has SBC putting in three OCDs initially?

15 A. I am sure there is a scenario where they
16 planned for that to happen, yes.

17 Q. Is there one where you are putting in
18 two initially?

19 A. There is a scenario in which that could
20 happen at well.

21 Q. And there is at least several that have
22 one going in, right?

1 A. Right. It would all be a factor of how
2 many remote terminals are served out of that OCD.
3 If you have more than the possible capacity, you
4 have to put more OCDs in. So, yes, we have planned
5 for that scenario.

6 Q. Is there a scenario where you put in
7 four or more initially?

8 A. I don't know. I don't know. I don't
9 recall anything that large. I have heard of one,
10 two, three. I haven't heard of anything more than
11 that. I guess it's possible.

12 Q. I am sorry, you have heard of 1, 2 and
13 3?

14 A. I have heard of scenarios where we have
15 a configuration for 1, 2 and 3 OCDs. I haven't
16 heard of anything more.

17 Q. Now, the way these OCDs connect, am I
18 correct, is with a fiber jumper; there is a yellow
19 fiber comes into the port on the card?

20 A. It would be a fiber jumper that would go
21 from the port on the card to somewhere else.

22 Q. How about the fiber distribution tray?

1 A. Typically.

2 Q. Sound right?

3 A. Yeah.

4 Q. And the fiber from the field comes in to

5 the -- it's called an FDI, right?

6 A. Right.

7 Q. Field fiber comes in and goes to the FDI

8 on one side, right?

9 A. Yes.

10 Q. And then a jumper or fiber comes from

11 the other side of that frame over to the OCD,

12 right?

13 A. Well, that is typically how it would be

14 laid out.

15 Q. And you can cross connect any two fiber

16 jumpers with any two field fibers, right?

17 A. If you had a fiber coming into the MDF,

18 you could cross connect it to anything else that's

19 on there -- I'm sorry, to the FDI, you could cross

20 connect it to any other device that was on that MDF

21 that had an appearance, so that would include that

22 OCD.

1 Q. Okay. So you could initially install
2 whatever number of OCDs you wanted based upon your
3 initial demand, right?

4 A. You could install however many OCDs
5 that -- you could install however many you wanted,
6 essentially.

7 Q. It doesn't have to be just one, right?

8 A. It doesn't have to be just one, no.

9 Q. And if you had a central office that had
10 a whole lot of RTs, that would tend to cause you to
11 install more than one OCD initially, right?

12 A. I am assuming that's what they planned
13 for with the multiple OCD configuration.

14 Q. Conversely, if you thought you had a
15 whole lot of demand but not that many RTs, that
16 could also cause you to install more than one OCD
17 initially, right?

18 A. Hypothetically it could.

19 Q. In other words, if you could see a huge
20 demand in a certain area, that might cause you not
21 to daisy chain as the link?

22 A. I would think that there could be a

1 scenario where if you had sufficient enough demand
2 and certainty in the market to insure that you
3 could recover your costs, that could happen, yes.

4 Q. And is there -- do you know if it's
5 possible or not -- strike that. Isn't it possible
6 to daisy-chain OCDs? That is, can't you hook one
7 OCD to another?

8 A. You can do what is referred to as an
9 intermachine tie.

10 Q. Yes, exactly. What does that do?

11 A. It basically connects one OCD to
12 another.

13 Q. So you can chain them together as well,
14 right?

15 A. Yes.

16 Q. Okay. So basically there is flexibility
17 in terms of which fibers you hook to which OCDs,
18 right, via the FDI we talked about?

19 A. You could go from one OCD to the other
20 from the FDI.

21 Q. All right. And you can change that over
22 time simply by changing the fiber jumpers, right?

1 A. You could move them to different
2 locations if you wanted to. It would be somewhat
3 complex because you may already have multiple PVCs
4 or VCs or hypothetically VPs, virtual paths, coming
5 into that port. So if you change the OCD boxes,
6 you would have to do some reprogramming of some of
7 the virtual fields, but you could do it.

8 Q. You simply use the Cisco Eldin manager
9 to reconfigure the traffic, right?

10 A. Yeah, but I still would say it would be
11 rather complex. You would have to take the
12 existing customers out of service and remap them to
13 the new location. It wouldn't be like a real quick
14 and easy swap or switch.

15 Q. All right. What will Ameritech do when
16 the capacity that it thinks is okay to serve grows
17 high enough so that you can't use the single OC-3c
18 that's now being provisioned in some cases? I
19 mean, what I am trying to ask you to assume is that
20 you actually agree that it's okay to grow capacity
21 for whatever reasons you choose to agree to that.

22 A. If in a hypothetical situation our view

1 is that there is sufficient demand and certainty in
2 the market that that was something that we wanted
3 to do as a business decision, the only thing I can
4 think of that would be even somewhat even remotely
5 practical would be to break the chain and offer
6 multiple OC-3s from the RT site.

7 Q. Isn't what we have just been talking
8 about exactly the kinds of things that Ameritech
9 would do to increase the through-put capacity of
10 its system?

11 A. If it deemed that to be a practical
12 matter, yes.

13 Q. All right. And you mentioned a figure
14 for an OCD a little while ago. Do you actually
15 know what the company pays for OCDs that are
16 engineered version installed?

17 A. That's the figure I have been quoted by
18 some our of our folks in our network planning
19 engineering organization. I am not certain -- they
20 are the ones who negotiate those deals, so I don't
21 know for sure.

22 Q. I am betting that Mr. Keown knows this

1 one.

2 A. He might.

3 Q. I hope he does because he used that in
4 his estimate of what it would cost to do all this.
5 So we will talk to him about that in some more
6 detail.

7 But isn't it the case that to the degree
8 that your facilities become so fully occupied that
9 you are required to add capacity on this rapid
10 upward growth path you describe, that that's a
11 happy circumstance and not one for gnashing of
12 teeth?

13 A. I think the key there would be what
14 drove the increase in capacity. I think that if
15 there was a situation where there was sufficient
16 customer base, that, for instance, there was some
17 certainty that if we increased the capacity that
18 there would be customers provisioned that would
19 allow us to recover the costs for making that
20 additional capacity available, then I certainly
21 think that would make it a more viable alternative.
22 I don't think that it would be viable to just

1 increase the capacity without any certainty in
2 terms of the market.

3 Q. You said this a number of times,
4 Mr. Boyer, this whole notion of certainty of
5 recovery. I thought Ameritech viewed itself as
6 being in the competitive marketplace?

7 A. I think Ameritech does view itself as
8 being in the competitive marketplace.

9 Q. Is there certainty of investment
10 recovery in a competitive marketplace?

11 A. There is a difference between that
12 degree of certainty and the certainty that's being
13 discussed in the context of this case. If the
14 company makes a decision to invest money in capital
15 to provide a service to anybody, one would assume
16 that that company would do some sort of forecast as
17 to what its demand would be and make an educated
18 judgement as to deploy that additional capital.
19 What's happening here is that the CLEC community is
20 asking Ameritech to deploy additional capital based
21 upon the potential demand for the CLECs. We have
22 no idea what that is.

1 Q. I suggest to you that we are not asking
2 for that. I suggest to you that you are testifying
3 that's the outcome of our request. What I mean is
4 we are not asking for 30 megabit per second PVPs,
5 are we?

6 A. You are asking for the Commission to
7 establish PVPs, so I tried to apply a set of
8 assumptions as to potential impact of that
9 particular issue.

10 Q. You agree with me that no one that you
11 are aware of has asked for PVPs of the size that
12 you posit we will in your examples?

13 A. I took a hypothetical assumption and
14 analyzed the impact.

15 Q. Okay. Is there any doubt in your mind
16 that CLECs are willing to pay for what they get?

17 A. I will assume that they would.

18 Q. Pardon me?

19 A. No, I would assume a CLEC would pay for
20 the services they buy, yes.

21 Q. At rates the Commission would approve?

22 A. I believe so.

1 Q. Rates that were set by the Commission?

2 A. Yes.

3 Q. And those rates are presumptively legal,
4 aren't they?

5 A. Legal, I guess. I don't know -- I am
6 not going to dispute TELRIC pricing, whether that's
7 reasonable or not. But I assume it would be legal,
8 yes.

9 Q. All right. You don't really want to
10 quibble about virtual versus physical points of
11 interconnection, do you?

12 A. I am not sure what --

13 Q. That is, you understand, do you not,
14 that in an ATM world the paradigm is somewhat
15 different in the sense that you have PVCs and PVPs
16 rather than actual physical circuits?

17 A. That's certain, but, yes, it's virtual.

18 Q. And that's also the case, is it not,
19 that there isn't a single physical dedicated
20 circuit even on TDM side circuit switched fiber
21 systems, isn't that right?

22 A. I am not sure. I mean, I think there

1 would be situations in a TDM world where there
2 would be dedicated circuits.

3 Q. On a fiber? There is a physical fiber
4 dedicated to each customer?

5 A. Well, it would depend on the scenario.
6 For instance, with Pronto, you have a fiber for the
7 voice traffic, for the TDM, from the RT back to the
8 central office. It's an OC-3, so it consists of
9 multiple channels. Whenever a customer goes off
10 hook from their house on the voice side of the
11 network, they are dedicated a channel over that
12 OC-3 at some point.

13 Q. Is it a physical channel?

14 A. It's physically within the OC-3, yes.

15 Q. No, it's a time slot, isn't it?

16 A. It's a time slot, yes.

17 Q. It's not a physical facility at all, is
18 it? It's a time slot on a physical facility?

19 A. That's true.

20 Q. So you are not going to tell the
21 Commission that they should apply an old circuit
22 switch paradigm to the new technology of ATM and

1 therefore conclude that, because PVPs and PVCs are
2 virtual, they aren't possible to connect to?

3 A. Well, I would say that it's a different
4 situation. Because in a traditional -- a time
5 division multiplexing network is typically run by
6 Sonet, and off of a Sonet facility you can get
7 access to the individual channels within the OC-3.
8 You can get a DS1, you can get a DS3, whatever
9 rides within that OC-3 other than typically DS0,
10 unless you munched it down. In an ATM network, in
11 a packet switched network, that form of access
12 typically wouldn't be there. Typically, you would
13 have to pick it off the packet switch somewhere.

14 Q. I can get access to my PVCs by buying an
15 OCD port, a DS3 or OC-3, right?

16 A. Right. You would need the packets
17 switched -- aggregate the packets to a common point
18 where it could be fed off to.

19 Q. So I can get it all with one connection,
20 right?

21 A. You can get them if you had an access
22 point at the OCD, yes.

1 Q. And the analog at the MDF is I can get
2 them all if I have a whole bunch of little copper
3 connectors?

4 A. Right.

5 Q. So this is just a more efficient way to
6 get a whole lot of circuits, right?

7 A. The OCD would be a way of getting access
8 to all the packet circuits, yes.

9 Q. And that's a good thing, right? Uses
10 fewer facilities?

11 A. If you are using packet switching, yeah,
12 I would think so.

13 Q. I mean, I guess what I am trying to ask
14 you is you are in favor of efficient engineering
15 solutions, aren't you?

16 A. I think typically the less points of
17 failure we have in a network is a good thing. So
18 from that perspective and the fact that you don't
19 have a physical connection every time using the
20 packet-based network is more efficient in that
21 manner.

22 Q. I guess you are also in favor of using

1 fewer facilities instead of more, right?

2 A. Yes, certainly.

3 Q. All right. I want to talk briefly about
4 cross connects at the RT. You address that, do you
5 not?

6 A. Yes, I do.

7 Q. You say it's impossible to unbundle
8 subloops at the RT, don't you?

9 A. I say that there is no point of access.

10 Q. Okay. So it is possible?

11 A. It is possible if there was a point of
12 access within the RT for someone to get access to a
13 subloop there.

14 Q. Now, we heard from Dr. Ransom yesterday
15 that Alcatel does not require its clients like
16 Ameritech to hard wire the feeder cables into the
17 back plane, do you agree with that?

18 A. I have heard that, yes.

19 Q. That's a choice that Ameritech has made,
20 isn't that right?

21 A. I would say that's a choice. It's also
22 the way that the DLC or NGDLC has been deployed for

1 a number of years in several states.

2 Q. A number of years before there were
3 CLCs, right?

4 A. Yeah.

5 Q. Well, I take it that SBC takes its
6 responsibilities to unbundle seriously, isn't that
7 fair?

8 A. I am sorry, I didn't hear.

9 Q. Am I correct that SBC takes its
10 responsibilities to unbundle its network seriously?

11 A. I think SBC takes its obligations under
12 the law seriously, yes.

13 Q. But that wasn't my question. Do you
14 recall my question?

15 A. No.

16 Q. Does SBC take its obligations to
17 unbundle its network seriously?

18 A. SBC takes its obligations to provide the
19 unbundled network elements that it is obligated to
20 provide seriously, yes.

21 Q. Now, there actually are or were and
22 still are two ways to hook up copper feeder cable

1 to the NGDLC, at least two ways, right? One is to
2 do what you have done which is to hard wire the
3 feeder pairs into the protector box, right?

4 A. That would be one way.

5 Q. Another way would be to bring in the
6 feeder cables from the field and place some or all
7 of them onto a cross connect field that sits in or
8 next to the RT, correct?

9 A. That's possible, yes.

10 Q. And do you know whether or not the
11 company considered the second two options in
12 deploying Project Pronto?

13 A. If I recall correctly, I think there was
14 some discussion of it.

15 Q. And it chose not to, right?

16 A. Yes.

17 Q. Had it chosen to do so, that would have
18 made access to copper subloops at the RT possible,
19 wouldn't it?

20 A. It would have made them possible at that
21 cross connect point.

22 Q. But because you didn't do it that way by

1 choice of SBC, that's why you are saying that they
2 are not accessible, because you chose not to make
3 them accessible?

4 A. I am saying that they are not accessible
5 simply because the cross connect point doesn't
6 exist today. There is a lot of reasons why it
7 doesn't exist, primarily because of the issues that
8 you were just discussing about multiple points of
9 failure in the network.

10 Q. You were discussing that, Mr. Boyer.

11 A. You were asking me questions in regards
12 to wouldn't you want to have less copper and less
13 facilities. In this case adding a cross connect
14 point would be essentially doing -- creating
15 exactly more. You would be putting more cross
16 connect points into the network.

17 Q. Isn't it correct to say that, although
18 it is technically feasible to do so, there is no
19 cross connect point at the RT because Ameritech
20 chose not to place one there when it deployed
21 Project Pronto?

22 A. In terms of the new RT sites that are

1 not the old ones, Ameritech has not placed cross
2 connect panels in the RT sites, that does not
3 exist, no.

4 Q. That was by your choice, not by
5 engineering necessity, isn't that right?

6 A. I would say that our generally accepted
7 engineering practice is to deploy NGDLC or DLC in a
8 configuration where the copper facilities are
9 spliced to avoid additional points of failure in
10 the network.

11 Q. Is it your testimony that it is
12 typically infeasible to place a cross connect field
13 as we have been discussing at the RT?

14 A. Define infeasible. Is it possible?
15 Yes. Infeasible, you would have to look at it as
16 to what the impacts were.

17 Q. Don't you have cross connect fields
18 throughout your network inside the SAIs?

19 A. Yes.

20 Q. And don't they work?

21 A. Yes. And that's -- an SAI by definition
22 is generally a cross connect field. But what you

1 are proposing is putting another cross connect
2 field in the RT site which creates two cross
3 connect fields.

4 Q. Okay. Mr. Boyer, on page 40 of your
5 testimony, here you are talking about ADLU cards
6 and your opinion about their feasibility as UNEs,
7 do you see that?

8 A. Yes.

9 Q. On line 31 you say a line card by itself
10 would provide no practical use to a CLEC, do you
11 see that?

12 A. Yes, I do.

13 Q. Isn't that true of all UNEs taken
14 individually? That is, any UNE by itself is of no
15 practical use to a CLEC?

16 A. I don't know if I would agree with that
17 statement.

18 Q. Okay. What can I do in terms of
19 offering a telecom service if all I have is copper
20 between the SAI and the OD?

21 A. I would say that there is a difference
22 between a practical use and providing telecom

1 service. You could use a copper facility from a
2 central office to a customer site for a multitude
3 of purposes.

4 Q. Such as what?

5 A. You could use it and connect it to --

6 Q. No, no, no connecting, just using it by
7 yourself, that's your testimony, by itself. What
8 can I use a subloop for by itself?

9 A. In lieu of any other component?

10 Q. No more connections are allowed, just by
11 itself, what's it useful for?

12 A. It would just be a copper going to a
13 customer site. I don't know what you would use it
14 for.

15 Q. Isn't that statement true as to every
16 UNE out there? That is, by itself they are of
17 little practical use?

18 A. I don't know if I would agree with every
19 UNE. I mean, there is unbundled local switching
20 and transport.

21 Q. Take that one, local switching. I go
22 and buy local switching from you and that's all I

1 buy. What do I use it for?

2 A. You would have to use it to get traffic.

3 Q. Just that, just local switching, what's

4 that useful for? Nothing, right?

5 A. I can't think of anything other than for

6 the use of the switching functionality.

7 Q. By itself it is worth nothing, right?

8 A. I would assume you would have to have a

9 switch port to go with it.

10 Q. Switch port?

11 A. You would have to have a port on the

12 switch to go with your switching function and your

13 shared transport, yes.

14 Q. Now, on page 48 you talk about which

15 UNEs can be accessed by collocating an RT, don't

16 you, starting at line 25?

17 A. Okay. Yes, I am sorry.

18 Q. You have that?

19 A. Yes.

20 Q. And there you say there are two, one is

21 unbundled dark fiber and the second is unbundled

22 copper distribution subloops, correct?

1 A. Yes, I would actually add that there is
2 probably a third. That would be a subloop from the
3 RT back to the central office, I guess, in lieu of
4 dark fiber.

5 Q. A copper subloop?

6 A. However the subloop is offered. There
7 could be a DS3, for instance, that went from the
8 central office to the RT that could be delivered as
9 a subloop or a copper subloop.

10 Q. I want you to think with me just about
11 Litespan 2000 installations, can you do that?

12 A. Sure.

13 Q. Are you testifying that using that
14 configuration you think that we can get a DS3 or
15 DS1 transport back to the central office?

16 A. It's possible.

17 Q. It's not possible, is it, with the base
18 configuration of the Litespan? That is, the output
19 of the Litespan is one OC-3 on the TDM fiber and
20 one OC-3c on the ATM fiber, isn't that correct?

21 A. That's true, but you could take on the
22 TDM side, you could put a DS1 card on the TDM side

1 or you could put a DS3 card on the TDM side, and
2 you could drop a DS1 and DS3 at the location off of
3 the copper coming off that system. So you could
4 drop a DS3 there if you wanted to.

5 Q. And I can run ATM cells across that?

6 A. It's a DS3. I mean, if you could put
7 the ATM traffic -- it would depend. If you had a
8 DSLAM, it could just be a DS3. You could hook the
9 DS3 up to the DSLAM, yes.

10 Q. And you have DS3 cards which fit into
11 the card slots of the Litespan 2000?

12 A. The Litespan 2000 I don't believe --
13 typically I think we would use it for DS1. You
14 don't need it for DS3 today simply because we don't
15 want to tie up too much of the TDM traffic. We may
16 do some other things at the RT site to make a DS 3
17 available. There is a lot of instances where that
18 happens.

19 Q. Are you testifying that wherever we
20 might want it today, there is DS1 and DS3 transport
21 available?

22 A. It would depend on whether or not the

1 equipment was there.

2 Q. That's what I am asking, is it there?

3 A. With the Litespan 2000 system we should
4 be able to provide a DS1 by placing an HDSL card
5 into the bank, into the TDM traffic.

6 Q. And what about a DS3?

7 A. A DS3 I am not certain on, but there are
8 a lot of instances in our T sites where we have
9 placed an FR150 multiplexer which would allow us to
10 drive a DS3 also.

11 Q. Okay.

12 JUDGE WOODS: Mr. Bowen, did you say there are
13 a lot of sites where you put in multiplexing
14 equipment?

15 THE WITNESS: There is some sites.

16 JUDGE WOODS: Because I just got a flash back
17 to the first run of these hearings, and I just
18 wondered what a lot of sites were. Because I
19 remember one of the parade of measuring horrors
20 was that we would have to put multiplexing
21 equipment in to do this stuff, and that's just too
22 costly, we can't do that.

1 MR. BOWEN: I recall the same thing, Your
2 Honor. I think since the record below is still
3 part of the record, we have a little bit of an
4 inconsistency perhaps between then and now.

5 JUDGE WOODS: I am sure somebody will see what
6 that is.

7 MR. BOWEN: We will be able to pull that out
8 for you, Your Honor. Maybe it's a whole new
9 network since Mr. Boyer came on.

10 Q. Has SBC ever said that a fiber subloop
11 can be accessed by an ADLU card?

12 A. I don't believe so.

13 Q. You have never read that?

14 A. I don't believe that a subloop can be
15 accessed by an ADLU card, no.

16 Q. Aren't you the contact person on the
17 marketing services descriptions?

18 A. I am. I wrote the marketing services
19 descriptions.

20 Q. So when I go in the closed record I am
21 not going to see any statements that say anything
22 like you can access a fiber subloop by an ADLU

1 card, right?

2 A. There was never any intention to provide
3 access to a subloop by plugging an ADLU card into
4 an RT. The marketing service descriptions were
5 always written to provide integrated product
6 offerings, and I would also disagree that there is
7 a subloop there.

8 Q. Okay.

9 JUDGE WOODS: Let's go off the record just
10 briefly.

11 (Whereupon there was then
12 had an off-the-record
13 discussion.)

14 (Whereupon the hearing was
15 in a short recess.)

16 JUDGE WOODS: Let's go back on the record.
17 Mr. Livingston?

18 MR. LIVINGSTON: The witness would like to
19 correct a couple statements that he made just
20 before the break.

21 JUDGE WOODS: Okay.

22 THE WITNESS: I think I stated that you could

1 drive a DS3 from the Litespan 2000. I actually got
2 that confused with the Litespan 2012. You can only
3 do a DS1 from a 2000. A DS3 would be from the
4 2012.

5 The other issue would be that I may have
6 stated a lot in terms of the FR150 statement. I
7 would say that the correct statement would be some.
8 That's what I thought I said. I misspoke.

9 Q. On that last point, Mr. Boyer, isn't it
10 correct that you only deployed those FR150s and
11 CEVs in Huts?

12 A. I am not certain.

13 MR. BOWEN: Okay. I am going to distribute,
14 Your Honor, and ask you to mark for identification
15 a document I will describe for the record. This is
16 a Power Point presentation titled Project Pronto
17 Product Overview, March 1, 2000, One Bell Plaza,
18 Concourse Auditorium. It's got Bates stamps at the
19 top running from 500101 and to 500130. And as
20 counsel indicated this morning for Ameritech, this
21 document is marked highly confidential but it
22 happens to be a document that was passed out to

1 CLECs at a meeting in Dallas on that date. And
2 counsel for Ameritech indicates that the proper
3 designation is public, not confidential.

4 MR. LIVINGSTON: That's right.

5 MR. BOWEN: So I would ask that you mark this
6 as Rhythms Rehearing Boyer Cross Exhibit Number 1.

7 JUDGE WOODS: So marked.

8 (Whereupon Rhythms
9 Rehearing Boyer Cross
10 Exhibit Number 1 was marked
11 for purposes of
12 identification as of this
13 date.)

14 Q. Do you have that, Mr. Boyer?

15 A. Yes.

16 Q. Do you have that document in front of
17 you?

18 A. Yes.

19 Q. You were at this meeting, were you not?

20 A. Yes.

21 Q. Let's just pace quickly through this
22 document, given the time constraints. Do you see

1 on page 1 the reference to a DLE unbundling plan,
2 explanation of Pronto unbundled network elements?

3 A. Yes, I see that.

4 Q. And on page 2 under Assumptions you say
5 that the products outlined in this presentation are
6 based upon the assumption that SBC gets the
7 interpretation of allowing it to own both the OCD
8 and the line card, right?

9 A. That's true.

10 Q. So this is in March of 2000 and the FCC
11 didn't actually give you that interpretation until
12 September, right?

13 A. That's true, yes.

14 Q. But even assuming that they had as you
15 are here, that they gave you that interpretation,
16 and in fact even after the Waiver Order actually
17 became effective, at this point you were still
18 calling Project Pronto UNEs, were you not?

19 A. As I have stated before, we called them
20 broadband service and end-to-end UNEs, and that
21 service happens to consist of several different
22 components which at the time were labeled UNEs but

1 they are substantially the same.

2 Q. Do you see the reference to the
3 unbundling plan on page 3?

4 A. Yes, I do.

5 Q. And on page 10 do you see a reference to
6 OC-3c transport that will be similar to common
7 transport?

8 MR. LIVINGSTON: Page 4?

9 Q. Page 10.

10 A. You are referring to the first --

11 Q. The last bullet.

12 A. Last bullet. I think that was an
13 analogy, yes.

14 Q. Yes, common transport is a UNE, right?

15 A. Common transport is a UNE, yes, it is.

16 Q. Okay. On page 14 this is addressing who
17 owns the line card issue, right?

18 A. Yes.

19 Q. And the first two of those have the CLEC
20 owning either the line card or a port level on the
21 line card, right?

22 A. Yes, it does.

1 Q. And do you see on the next two pages the
2 pros and cons associated with the CLEC owning the
3 line card or owning the port, in other words, plug
4 sharing as you termed it then?

5 A. Yes, I do.

6 Q. And then on page 18 this slide addresses
7 what we can get, what CLECs can get, if you own the
8 line card, right? That is CLEC capabilities under
9 Proposal Number 3?

10 A. Yes.

11 Q. Number 3 is you own the line card,
12 right?

13 A. Yes.

14 Q. And the first bullet says, "SBC will
15 unbundle access to the network elements," plural,
16 right?

17 A. It may state that, but that was not the
18 intention at the time.

19 Q. So you're misleading us intentionally at
20 the meeting then?

21 A. No, that presentation was given in the
22 context of this was the first time that anybody had

1 ever discussed the architecture in detail with the
2 CLECs. We made several statements and we were
3 trying to explain as best we could. It wasn't a
4 literal interpretation of what we were doing.

5 Q. So we shouldn't have taken the word
6 unbundled access to network elements to mean
7 unbundled access network elements, is that your
8 testimony?

9 A. I will tell you this much. I gave the
10 presentation. I was there. When I talked about
11 the product, I went through in detail on several
12 diagrams, explaining to the CLECs our intention to
13 offer an integrated offering. So if you want to
14 mischaracterize it and state that we were going to
15 offer it as individual UNEs --

16 JUDGE WOODS: Slower please.

17 A. Sorry. If you want to mischaracterize
18 it and state that we had an intention at the time
19 to offer it as individual UNEs, then that's your
20 prerogative, but that was not our intent.

21 Q. Well, we actually, if you recall, have a
22 videotape and transcript of that meeting, don't we?

1 A. You most certainly do.

2 Q. Doesn't the second bullet say that we
3 have the option -- option means non-mandatory,
4 right? That's what option means?

5 A. It's one definition, yeah.

6 Q. Even now it means that, right?

7 A. I would assume so.

8 Q. Did you mean it then, option meaning
9 non-mandatory?

10 A. Yes, it means an option.

11 Q. Collocation as a means of access to the
12 unbundled elements, isn't that what you said there?

13 A. Yes.

14 Q. That's not element, that's elements,
15 right?

16 A. That was not the intent.

17 Q. Isn't that what the words say,
18 Mr. Boyer?

19 A. Again, as I have stated before, that's a
20 mischaracterization of a presentation. Have you
21 ever given a presentation and try to draw analogies
22 or explain something to someone and use different

1 words when you are speaking to someone versus what
2 is literally written on paper?

3 Q. Actually, when I give presentations I
4 try to be as accurate as I can in what I write down
5 because that's what people take away.

6 All right. Mr. Boyer, look at the
7 fourth bullet. It says, "CLECs will continue to
8 have the option to develop new plug-ins with
9 vendors." Do I misunderstand the plain english
10 meaning of that in your opinion?

11 A. I would say that would mean that a CLEC
12 could develop a new plug-in with the vendor, and
13 under this proposal with SBC line card ownership,
14 if that vendor developed that line card, then we
15 would deploy it as part of that product.

16 Q. Then on page 20 you see the scenarios
17 under the unbundling plan?

18 A. Yes.

19 Q. It says, "The TELCO will offer unbundled
20 network elements," again plural, "in conjunction
21 with two typical scenarios," one of which is line
22 sharing, right?

1 A. Yes. At the time we offered the
2 product, the end-to-end product, in two different
3 versions, one which would be line sharing and one
4 which would be for data only.

5 Q. Okay. Well, I am sure that we are going
6 to see when we turn the page that you actually
7 meant end-to-end. Let's turn the page here, and
8 look in the middle of the page at what's called UNE
9 Number 2. Do you see that on page 21?

10 A. Yes.

11 Q. So that describes, I take it from your
12 previous testimony, consistently stated, that must
13 describe this particular UNE all the way from the
14 OCD to the end user, right?

15 A. It talks about the end-to-end UNE and
16 the several different components they would consist
17 of, yes.

18 Q. And please tell me what UNE Number 2
19 consists of?

20 A. It consists of the ports on the line
21 card and the use of the ATM data transport from the
22 RT to the OCD essentially, including all virtual

1 cross connects and virtual circuits that would be
2 involved.

3 Q. Isn't that -- that's not where the end
4 user premises is, though, on this drawing, is it?

5 A. No. However, as I have stated before,
6 we had no intention to offer that without offering
7 the other pieces, UNE Number 1 and UNE Number 3.
8 And if you look at our broadband service product
9 today, it is still broken up in that manner. It's
10 just a change in we don't call it UNE any more.

11 Q. Isn't UNE Number 2 separately stated as
12 the link between the OCD and the NGDLC?

13 A. For descriptive purposes, yes. But
14 again it was never intended to be offered as an
15 individual element.

16 Q. Okay. And you had gone so far, I take
17 it, in your UNE product development to be able to
18 offer as part of the presentation to CLECs on March
19 1 an indication of the high level service order
20 flows and business requirements that begin on page
21 24, is that right?

22 A. Yes, we had gotten that far.

1 Q. And if you turn back with me to page 27,
2 you can see the high level order flows, can't you?

3 A. That is -- that's an order flow diagram
4 that I put together to try to explain as best I
5 could, yes.

6 Q. And that high level order flow is based
7 on a UNE order, is it not?

8 A. It's based on a CLEC issuing a local
9 service request.

10 Q. And that's how you order UNEs, isn't it?

11 A. Traditionally. It's also how you order
12 the broadband service today.

13 Q. Is the broadband service mentioned in
14 this presentation at all, Mr. Boyer?

15 A. No, but as I have said, it's the same
16 product with a different name.

17 Q. Weren't you indicating to CLECs that
18 they would order UNEs via the local service request
19 process as shown by this order flow in that
20 meeting?

21 A. I told CLECs that they would issue a
22 local service request to order the product, yes.

1 Q. And the product was?

2 A. The broadband UNE at the time.

3 Q. And you had a UNE rate structure on the
4 next page, didn't you?

5 A. We had a rate structure which again is
6 the same as the current rate structure.

7 Q. Does it say UNE rate structure on the
8 slide, Mr. Boyer?

9 A. It does say that, yes.

10 Q. And you meant that at the time to be
11 accurate, didn't you?

12 A. We meant it at the time to be accurate
13 of what we were offering then.

14 Q. And then finally on page 29 under
15 Product Availability Date, do you see where you
16 say, "The DLE UNES as outlined in this presentation
17 are expected to be made available in late April,
18 early May time frame dependant on product
19 development efforts," right?

20 A. I do see the statement.

21 Q. As it turns out, that's the time when
22 someone else you are not aware of decided this was

1 going to be not UNEs at all but wholesale broadband
2 service, correct?

3 A. About that time frame.

4 Q. So you never delivered what you were
5 telling the CLECs they were going to get, that is
6 UNEs on this platform on this schedule, did you?

7 A. Well, again we announced a product.
8 That is the same thing as what we were discussing
9 here with the name service, so in terms of what is
10 the product and whether it was.

11 MR. BOWEN: Could I have one second, Your
12 Honor?

13 JUDGE WOODS: Yes.

14 (Whereupon there was then
15 had an off-the-record
16 discussion.)

17 JUDGE WOODS: Back on the record. Mr. Bowen?

18 MR. BOWEN: At this point, Your Honor, I would
19 to examine the witness on a document produced by
20 Ameritech and asserted confidential, so I think we
21 have to go into closed record.

22 JUDGE WOODS: Okay. At this time I would

1 instruct the court reporter to close the public
2 record and to open an in camera proceeding, please.
3 Mr. Bowen?

4 MR. BOWEN: Thank you, Your Honor.

5 JUDGE WOODS: Also, I would ask anyone who
6 hasn't signed a confidentiality agreement to please
7 leave the room.

8 (Whereupon at this point
9 the parties agreed the
10 proceedings would be
11 considered proprietary and
12 are contained in the
13 separate in camera
14 transcript.)

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1 CONTINUATION OF PROCEEDINGS

2 MS. FRANCO-FEINBERG: Thank you, Your Honor.

3 CROSS EXAMINATION

4 BY MS. FRANCO-FEINBERG:

5 Q. Mr. Boyer, I just have a couple
6 additional questions for you. Asking a follow-up
7 question to you of some questions that Mr. Bowen
8 asked you earlier this morning, I think you
9 expressed throughout at least your direct testimony
10 concern that should the Commission's Order survive
11 rehearing exactly as it is, that Ameritech will not
12 be able to recover its costs, is that correct?

13 A. I would say that I have testified to the
14 fact that if Ameritech was required to build out
15 its network to support what the Commission ordered
16 in the first case, that we would not be able to
17 recover our costs.

18 Q. And it seems to me that part of your
19 concern is that -- let's say the Commission's Order
20 is upheld or put in place again, to be simple, next
21 month. I get the sense that SBC envisions that
22 it's going to have to double its capacity

1 immediately beginning, say, September 1 of 2001?

2 A. I don't know if that's the correct way
3 we were looking at it. I think what we are looking
4 at is the potential down the road as to what could
5 possibly happen with this Order, and we are
6 analyzing it from that perspective.

7 Q. So it's not your assumption that all the
8 capacity will be consumed immediately following the
9 Commission's order, is that correct?

10 A. That wasn't my assumption, no.

11 Q. So is it your expectation that SBC would
12 increase capacity as needed sometime in the future
13 following the Commission's Order? Would that be
14 normally how SBC would respond?

15 A. I don't know for sure. I mean, it would
16 depend on circumstances.

17 Q. Okay. But that's not what you would
18 expect?

19 A. I wouldn't generally. I don't know of
20 any plans in the company to increase the capacity
21 at all right now. And if there were an order that
22 required us to offer new services that may lead to

1 increased demand over the architecture, I don't
2 know if we would do that immediately. I would
3 assume that we would wait and see what
4 circumstances created that.

5 Q. Wouldn't it be more logical, given your
6 concern that may be nobody will buy your UNE
7 product, to wait to see if in fact people purchase
8 it before you expand or grow your capacity?

9 A. It would be logical before you offer any
10 product that you would see if people would purchase
11 it before you make it available or before you would
12 deploy the necessary or spend the necessary capital
13 with the manufacturer to make it available, yes.

14 Q. I also got the sense, and correct me if
15 I am wrong, that at least in your testimony you are
16 concerned that perhaps, should the Commission
17 establish TELRIC rates, that that won't properly
18 compensate or recover Ameritech costs to increase
19 capacity in the system if that were necessary, is
20 that a correct understanding?

21 A. My testimony basically discusses the
22 fact that, regardless of the price or the rate,

1 that the only way that any business can recover its
2 costs if it spends capital to deploy product is if
3 there is enough demand for that product to allow it
4 to recover its costs, irrespective of the rates.

5 Q. I think you also testified earlier today
6 that, when questioned about the Project Pronto
7 Waiver Order which you are familiar with, that
8 despite the fact that there is in your opinion
9 nothing explicit that requires deployment of
10 additional services or obligates SBC to deploy
11 additional services, it's your understanding that
12 there was, and I believe these were your words, an
13 expectation by the FCC that SBC would commit to
14 deploy additional services, is that correct?

15 MR. LIVINGSTON: I am going to object. The
16 transcript is going to speak for itself, but I
17 think that's a mischaracterization of his
18 testimony.

19 Q. Did you say earlier today that it was
20 your understanding there was an expectation by the
21 FCC that SBC would provide additional services over
22 the Project Pronto network architecture?

1 A. I believe that there was some
2 expectation from the FCC that as capacity and
3 various other issues were resolved that additional
4 services would be deployed.

5 Q. And very likely, given the changes in
6 the industry, any additional services would consume
7 additional capacity over your network architecture,
8 is that correct?

9 A. Yes, essentially, yes.

10 Q. And if that occurs in the next three
11 years, when you have committed to deploy the
12 broadband service at least in the other 12 states,
13 you would still be pricing the product at TELRIC,
14 is that correct?

15 A. I believe that the -- I am not certain,
16 actually. I am not certain. I am not sure if the
17 Order itself refers to any future developed
18 services or the ones that exist. I know the two
19 offerings today that are listed in the Order, the
20 broadband service and the broadband service
21 combined voice and data, are offered at TELRIC
22 consistent with that Order. But I am not sure

1 about anything in the future.

2 Q. So is it your testimony that possibly
3 SBC, if it developed or deployed a new quality of
4 service, could decide to price the product even in
5 the next three years not at a TELRIC rate?

6 A. I am not intimately familiar with that
7 issue in the order. I don't know if that is
8 specifically spoken to or not.

9 Q. Can we assume that SBC committed to
10 offer the broadband service for the next three
11 years at TELRIC?

12 MR. LIVINGSTON: Do you mean the next three
13 years from this date?

14 Q. I am sorry. During the three-year
15 period -- well, it is Mr. Ireland's testimony, is
16 it not, that SBC is willing to possibly provide the
17 broadband service until October 1, 2004, is that
18 correct? Are you familiar with Mr. Ireland's
19 testimony?

20 A. I was here the morning of the first day.
21 If he stated that later, I wasn't here the rest of
22 the time.

1 Q. I don't have the testimony cited, but
2 can we assume that Mr. Ireland indicated that SBC
3 would be willing, if the Commission changed its
4 Order, to possibly deploy Project Pronto and offer
5 the broadband service to October 1 of 2004 at
6 TELRIC prices?

7 A. Yes.

8 Q. With the caveat from SBC that no
9 unbundling order occur?

10 A. Right.

11 Q. Make that clarification. Should that
12 occur and should you deploy an additional service
13 that consumes more capacity, would you not be
14 recovering your rates through TELRIC pricing during
15 that time period?

16 A. Again, as I have stated before, if that
17 order occurred and we deployed a new service, it
18 would depend upon how much additional capital that
19 service drove.

20 Q. I am sorry. Perhaps I was unclear in my
21 question, Mr. Boyer. I am saying that let's assume
22 the SBC gets what it wants and the Commission's

1 Order -- let's just ignore that the Commission ever
2 ordered anything here. And you lift the suspension
3 of your Project Pronto deployment and you operate
4 consistent with your Project Pronto Waiver Order .
5 That's the world I am assuming. Do you understand
6 that?

7 A. Yes.

8 Q. And what I understood your testimony
9 earlier today to be was that, at least it is your
10 understanding, there is an expectation by SBC that
11 SBC will deploy additional services during the
12 three-year time period that you would be operating
13 under the Project Pronto Waiver Order, is that your
14 understanding?

15 A. My assumption that the FCC in discussing
16 Project Pronto made an assumption that numerous
17 issues in terms of capacity would be worked out
18 through the collaborative process and the new
19 features would in fact be deployed.

20 Q. And I think you agree -- I just want to
21 make sure we have got all our assumptions here --
22 that any additional service that would be deployed

1 would likely consume more capacity on your system,
2 is that correct?

3 A. Any -- most likely the services would
4 consume more capacity.

5 Q. And I think we also established that you
6 would be pricing your product at TELRIC during this
7 three-year period that we are talking about, is
8 that correct?

9 A. The current product, yes.

10 Q. So I would assume that SBC believes that
11 it will be recovering its costs for that additional
12 capacity during that three-year period, is that
13 correct, using TELRIC?

14 A. I would say that if -- I would say that
15 in terms of this Order if there was enough demand,
16 again, at a TELRIC-based price, I assume that --
17 again, I am not going to dispute whether I believe
18 TELRIC-based pricing allows for sufficient cost
19 recovery -- but if you assume that TELRIC pricing
20 allows that, if there was sufficient demand, then
21 that would be the case.

22 Q. Your company has voluntarily complied to

1 price services at TELRIC?

2 A. It has.

3 Q. And can we assume that SBC has not
4 decided to operate at a loss for the next three
5 years or should we assume that?

6 MR. LIVINGSTON: SBC as a whole or on this
7 product?

8 Q. Well, on the broadband service product.
9 Can we assume that you have not decided -- SBC has
10 not decided to offer the broadband service at a
11 loss for the next three years?

12 A. What we have done is we have priced it
13 out under TELRIC principles. So I would assume
14 that allows us to recover our cost.

15 Q. So obviously SBC believes that TELRIC
16 pricing will recover its costs for the broadband
17 service offering?

18 A. Well, again, I am not a TELRIC expert so I
19 don't know whether TELRIC allows us to recover our
20 costs or not. As I have said before, I am not
21 going to dispute that point.

22 Q. But if you did deploy additional

1 capacity in the next three years, you would in
2 fact -- you would in fact price it with TELRIC
3 pricing, is that correct?

4 A. If we offered the current products that
5 are within the Order. Like I said earlier, I don't
6 know if the Order states that any future product
7 over the platform has to or does not have to be
8 priced at TELRIC. I don't recall whether that's in
9 here or not.

10 Q. You don't know or should CLECs be
11 concerned that if you deploy a new product it will
12 be at market-based prices?

13 A. Again, I don't know. If you can point
14 to me somewhere in the Order where it specifically
15 says that -- I don't know if it says TELRIC or not.
16 I don't know.

17 Q. I mean, I guess I understood your
18 commitment to be that anything in the next three
19 years that falls under your broadband service
20 offering will be priced at TELRIC, is that not
21 SBC's commitment?

22 A. In this Order?

1 Q. Just your commitment generally, what's
2 your understanding of what SBC is willing to do
3 with respect to pricing for the next three years
4 for the broadband service offering?

5 A. I believe that's the case, but I am not
6 certain. But again we are talking about the
7 existing set of products. So if there is something
8 new, it will have to be taken up at that time.

9 Q. Okay. You also express, I believe, in
10 your rebuttal testimony some concern about that
11 CLEC forecast would not allow you to properly grow
12 capacity, is that correct?

13 A. Yes. I basically stated that if there
14 was a non-binding forecast, it wouldn't give us any
15 certainty.

16 Q. Isn't it standard practice at SBC or
17 Ameritech to require CLECs to provide a non-binding
18 forecast with which you determine how to grow
19 capacity and when it is needed?

20 A. I do believe there are situations in
21 which non-binding forecasts are provided.

22 Q. Is that the case, for example, with

1 trunks for voice providers?

2 A. We do rely on forecasts, non-binding
3 forecasts, for that purpose, yes.

4 Q. And you are able to properly grow
5 capacity as necessary with these non-binding
6 forecasts, is that correct?

7 A. I would assume so.

8 Q. Is that also the case for transport
9 requirements for collocation, if you know?

10 A. I don't know for sure on that one.

11 Q. What about splitters? Do CLECs provide
12 you with non-binding forecasts with which you grow
13 capacity, if necessary?

14 A. I believe so, yes.

15 Q. What about cable facilities and
16 collocation spaces?

17 A. Again, I am not a collocation expert so
18 I don't know.

19 Q. Do you know if CLECs provide you
20 non-binding forecasts for capacity growth in that
21 situation?

22 A. I am not sure what we did do with collo.

1 Q. What about linesharing line forecast?
2 Do CLECs provide you non-binding forecasts so you
3 can determine if capacity is needed?

4 A. I am aware of the fact that CLECs
5 provide forecasts for splitters. I am not sure if
6 we use the linesharing forecast for the purpose of
7 capacity or not.

8 Q. Are you aware that SBC did not want to
9 have binding forecasts in the linesharing context
10 originally because it didn't want to be obligated
11 to provide capacity?

12 A. Yes, I am.

13 Q. So in fact at least in other situations
14 SBC doesn't want CLECs to provide it with
15 non-binding forecasts, am I correct?

16 A. Yes.

17 Q. But here apparently, to alleviate your
18 concerns, you believe that binding forecasts would
19 be the appropriate solution?

20 A. It is my opinion that a logical
21 conclusion would be that, before SBC would spend
22 what could potentially be millions of dollars to

1 enhance its network, that we would want some
2 commitment that there was a certainty that there
3 was a market that would be led from that
4 expenditure.

5 Q. I assume that, for example, when you
6 increase your capacity on the trunks, that is, I am
7 guessing, a pretty substantial investment by SBC,
8 is that safe to say?

9 A. We can assume that.

10 Q. But, yet, you are able to do that
11 without binding forecasts?

12 A. Again, I don't know what the exact
13 dollar amount would be. I don't know if it's the
14 same circumstance as in this particular instance.

15 Q. And, again, I assume you are not a
16 hundred percent certain that immediately CLECs will
17 consume all the capacity and pay you back in that
18 situation with trunks, is that correct?

19 A. I would say it's a different
20 circumstance. Because in trunking there is a lot
21 of trunks essentially. They can be used for
22 multiple purposes, including by SBC itself for

1 traffic. And so that's an interoffice application.
2 There is a lot of different ways in which that
3 interoffice network can be used. In this case you
4 are talking about a very specific architecture for
5 a specific purpose, so I think it would be a little
6 bit more difficult.

7 Q. Maybe I misunderstood the past couple of
8 days when we talked about what the Litespan could
9 do and that it could provide various services over
10 that platform, correct?

11 A. Yes.

12 Q. Including services SBC provides, is that
13 correct?

14 A. Yes.

15 Q. So if you grow the capacity, it's not
16 just been grown for a CLEC, is it?

17 A. In the context of this Order it would
18 be.

19 Q. SBC wouldn't use that capacity
20 potentially?

21 A. There might be some potential down the
22 road, but we don't have any plans to increase the

1 capacity for our own use, no.

2 Q. Nor is there any requirement that you
3 have to increase the capacity, even if the
4 Commission's Order is upheld, is that correct?

5 A. I guess. There is no requirement -- you
6 are saying that there is no requirement that we
7 grow the capacity if the Commission's Order is
8 upheld?

9 Q. I am asking you, if the Commission's
10 Order is upheld tomorrow, is there a requirement
11 that SBC immediately go double its capacity?

12 A. I don't believe so.

13 Q. I just want to ask you a couple
14 questions about the process. I have a couple
15 questions about the collaborative process that
16 would be used with your broadband service offering.
17 As I understand it, if a CLEC has a particular
18 request, let's say Alcatel comes out with a brand
19 spanking new line card tomorrow, some super special
20 release, I suppose it would be, if a CLEC wanted to
21 put it in your Pronto network architecture, put it
22 in the Litespan today, it would have to make a

1 special request of SBC, is that correct?

2 A. That is the current process.

3 Q. Is there any intention to change the
4 process in the near future?

5 A. Not that I am aware of.

6 Q. And let me know if I am wrong, we
7 submitted a request to you that I think you have,
8 is it, 30 business days to respond as to whether
9 you think it would be even technically feasible, is
10 that correct?

11 A. That sounds about the right -- I don't
12 know the exact number of days. I haven't looked at
13 it in awhile, but that sounds about right.

14 Q. Does 45 business days to respond sound
15 about right?

16 A. I think you are right; 45 is the right
17 number.

18 Q. And that doesn't mean we in fact would
19 be -- okay, that's two and a half months
20 approximately, 45 business days, is that correct?

21 MR. LIVINGSTON: Two and a half months?

22 MS. FRANCO-FEINBERG: Forty-five business

1 days.

2 MR. LIVINGSTON: That's a month and a half.

3 MS. FRANCO-FEINBERG: I think there are 20
4 business days each month.

5 MR. LIVINGSTON: I stand corrected.

6 Q. It is 45 business days, is that correct,
7 Mr. Boyer?

8 A. Yes.

9 Q. So approximately two and a half months
10 following our request for a line card SBC response,
11 is that correct?

12 A. Yes.

13 Q. And that response isn't fine, Covad, go
14 ahead and deploy your line card, is it?

15 A. I am trying to recall the exact process.
16 I believe that after 45 days that's when we provide
17 an initial quote per se as to what it would cost to
18 put the line card in.

19 Q. So it's kind of an initial assessment,
20 kind of a no/no go response?

21 A. It's the response to the CLEC to give
22 them enough information to make a decision whether

1 they want us to proceed or not.

2 Q. So there is some unspecified period of
3 time thereafter where either you say no and we have
4 to try to get it resolved somewhere, is that
5 correct?

6 A. Actually, I think the way the process is
7 supposed to work is that we provide a quote after
8 45 days and then the CLEC is given a time period
9 under which it can decide or decide one way or the
10 other. So any time after that would be the CLECs.
11 It would be up to them to make a decision at that
12 point.

13 Q. I think it's 30 days you give the CLEC
14 to response to your proposal, is that right?

15 A. Yes.

16 Q. Let's assume that you wait two and a
17 half months, you provide us a response that maybe
18 you could possibly do it, deploy the line card.
19 Then -- I am sorry, I kind of lost my train of
20 thought there. Okay. So a CLEC doesn't know in
21 fact then under your special construction or
22 special request process when in fact it will be

1 able to provide service using this additional
2 service; there is no guarantees, for example,
3 right?

4 A. No.

5 Q. And it has no way of even knowing how
6 much it will cost, is that correct?

7 A. Well, the quote that we would provide
8 after 45 days would contain an initial cost, yes.

9 Q. Is that an initial assessment or is that
10 definitely what would be the cost? Is there
11 further assessment as to what the real cost would
12 be or is that it, that's the cost?

13 A. I think it provides a cap that the cost
14 will be no more than a certain number.

15 Q. So even though Alcatel may have a
16 licensed card that will properly function in its
17 system, it's the Litespan system as it is deployed
18 today, a CLEC would have no assurances or no
19 guarantee that that would ever be deployed by SBC
20 even if they made a special request, is that
21 correct?

22 A. There is no certainty, no.

1 Q. Even though Alcatel thinks it will
2 function fine in the system?

3 A. Right.

4 Q. And presumably if Alcatel deployed the
5 card, it believed that there was sufficient
6 capacity in the system to support the card, is that
7 correct?

8 A. I would assume Alcatel would assume
9 there is sufficient capacity within its system,
10 within the NGDLC equipment, to support the card.
11 That doesn't mean that there is sufficient capacity
12 throughout the overall network.

13 Q. The overall network being what other
14 part other than the Pronto network? Is that what
15 you are referring to?

16 A. Well, your question was that Alcatel
17 believes there is enough capacity to support the
18 card. The NGDLC system is all Alcatel provides.
19 The rest of the network includes the fiber, the
20 OCD, and everything else.

21 Q. But you did discuss with Mr. Bowen that
22 there are ways to alleviate capacity constraints in

1 other parts of the Pronto architecture, is that
2 correct?

3 A. I stated that was possible, yes.

4 Q. So -- and is there a cost or a charge at
5 all if a CLEC makes a special request for
6 additional service or a new line card?

7 A. I think it's a hundred dollars.

8 Q. Now, you -- if I understood, Mr. Boyer,
9 your background actually is in marketing, is that
10 fair, for a certain period of time at SBC?

11 A. My background is mostly in special
12 services and network operations. And then I spent
13 a year and a half or two years working in a product
14 management position which is under the marketing,
15 industry marketing organization. But my entire
16 time in that position I spent facilitating a team
17 of network individuals that work within network to
18 develop a product. So I wouldn't call that
19 marketing, what most people folks would think of as
20 marketing as being.

21 Q. Okay. I understand. Are you aware of
22 anyone -- I think it is Mr. Ireland's testimony

1 that no one other than AADS has purchased the
2 broadband service from SBC, is that correct?

3 MR. LIVINGSTON: You mean ASI?

4 Q. Well, you said an affiliated CLEC. I
5 suppose I don't know if that's ASI or AADS in other
6 states. I don't know.

7 A. Okay. Can I answer?

8 Q. Sure.

9 A. I guess, I think there is actually a few
10 other CLECs that have bought one or two of the
11 broadband service, a few. Not many but a few.

12 Q. So Mr. Ireland's testimony then stands
13 corrected, or I am confused. Mr. Ireland's
14 testimony stated pretty unequivocally that no one
15 other than SBC's affiliated CLECs or data
16 subsidiaries were purchasing the product. Which
17 one is it?

18 A. I believe that 99.9 percent of the
19 orders are our affiliate, but there are a few from
20 CLECs that I have seen on some reports that we I
21 have seen. And we did do a trial of the product
22 under which CLECs did purchase the product, so

1 there have been CLECs that have purchased it, yes.

2 Q. Has anyone other than SBC's data
3 subsidiary or data CLEC signed a broadband service
4 agreement with SBC?

5 A. Yes.

6 Q. They have. And those CLECs are
7 purchasing them?

8 A. I don't believe that they are all
9 purchasing them, but they have signed the
10 agreement.

11 Q. Do you have a sense of the percentage of
12 any CLEC and a percentage of any data CLECs in a
13 state that are purchasing your broadband service
14 product?

15 A. I don't know how many data CLECs there
16 are in a state. I think we have -- I honestly
17 don't know. I know a few CLECs, five, six maybe .
18 So how many states --

19 Q. Have you gotten a general sense from all
20 the Project Pronto collaboratives that you have
21 either attended or led that your product doesn't
22 seem to meet most CLECs needs, is that a fair

1 statement?

2 A. I would say that the product as it
3 currently stands does not meet a lot of the CLECs'
4 needs. A lot of the CLECs have asked for
5 additional things, yes.

6 Q. So when you developed the product, did
7 you envision that it would be so, if I can say
8 this, not embraced by the CLEC community when you
9 went through all these market service descriptions?

10 A. Well, I mean at the time I was
11 developing a product that we could technically
12 provide over an architecture. I wasn't really
13 focused on what the potential market for that
14 product might be. I am a little disappointed to a
15 certain extent that no CLECs, not many CLECs, are
16 using it outside of our own affiliate, but I can't
17 control that.

18 Q. Doesn't it seem normal that a company
19 that is driven by market forces would respond to
20 its customer base and change its product offering
21 to meet this unquenched demand by its customer
22 base?

1 A. I think that a business would change its
2 product mind to meet demand if they felt like
3 demand was sufficient enough for them to do that.

4 Q. Participating in Project Pronto
5 collaboratives didn't you get a sense, for example,
6 that there was quite a bit of demand by the CLEC
7 community for access to the Project Pronto network
8 achitecture?

9 A. I get the sense that there is quite a
10 bit of demand from the CLEC community for some form
11 of access. At the collaborative sessions nobody
12 has ever provided any form of specific information
13 saying we want to purchase X number of this
14 particular element. That's what the special
15 request process is for.

16 Q. Has SBC ever asked CLECs to perhaps
17 quantify or provide a forecast as to what their
18 anticipated demand would be?

19 A. Yes, we have.

20 Q. And you just never received information
21 then, is that --

22 A. Well, we had a discussion at one of the

1 collaborative sessions with some CLECs about, for
2 instance, with the CBR offering. We talked to some
3 CLECs about the potential of what would they be
4 looking for in items of a CBR offering. And the
5 general response was that there was quite a bit of
6 debate from the collaborative session, as I am sure
7 you can imagine, about whether the CLECs would
8 provide the forecast or not, and we really never
9 got any more.

10 Q. So you don't really know if in fact
11 there is demand for the broadband UNE as you
12 initially envisioned it back in 2000, isn't that
13 true?

14 A. At the time, no.

15 Q. But you don't even know today if in fact
16 CLECs intend to use your product; you are just
17 assuming that they wouldn't in your testimony, is
18 that correct?

19 A. Well, I didn't say that. I am assuming
20 that there is just not as much demand as we would
21 like, yes.

22 Q. But you have no reason to -- you have no

1 underlying information to support that other than
2 an assumption, is that correct?

3 A. I have a general assumption. I do think
4 that there are some CLECs that will probably use
5 the product that are ramping up to use it now. We
6 have negotiated agreements with several of them, so
7 I can only assume that they wouldn't negotiate an
8 agreement if they had not intention of using it.

9 Q. I just want to clarify, I am talking
10 about the broadband UNE as you envisioned it back
11 in 2000 when you were doing your market service
12 descriptions.

13 MR. LIVINGSTON: Is that what's known today as
14 the broadband service?

15 MS. FRANCO-FEINBERG: No, I am talking about a
16 UNE. I guess Mr. Boyer's testimony actually said
17 they are indistinguishable, if I understood his
18 testimony.

19 MR. LIVINGSTON: What we are offering today,
20 the record I think is undisputed, is a broadband
21 UNE -- I mean a broadband service.

22 (Laughter)

1 MS. FRANCO-FEINBERG: He said it. All right.
2 Mr. Livingston, sign us up for that service right
3 now.

4 MR. SCHIFMAN: We accept the offer.

5 MS. FRANCO-FEINBERG: Exactly.

6 MR. LIVINGSTON: It is also undisputed that I
7 misspoke.

8 MS. FRANCO-FEINBERG: I knew if I waited long
9 enough.

10 Q. Well, actually, I think it's undisputed
11 at this time that you are not offering anything in
12 the state of Illinois. I mean that's more
13 accurate. But is it correct to say that, based on
14 your Project Pronto collaborative attendance, that
15 your sense is that the general CLEC community would
16 like to have unbundled access to Project Pronto?

17 A. My sense is that there were a lot of
18 CLECs at the collaborative, and they certainly
19 would like -- we had discussed the topic, yes.

20 Q. In fact, it is reasonable to assume
21 that, if Project Pronto was provided in an
22 unbundled network element, that there would be

1 demand by the CLEC community for such an offering
2 and such access?

3 A. Based upon the collaborative session I
4 don't believe that's the case, no.

5 Q. You are telling me that during the
6 collaborative session you did not receive a sense
7 from the CLEC community that there would be
8 interest and demand in unbundled network elements?

9 A. I said that I think there would be
10 interest. I don't know if that necessarily equates
11 to demand.

12 Q. Do you think that CLECs attend these
13 collaboratives to just make points based on things
14 that they don't need? Is that what you are saying?

15 A. To some extent I think some CLECs do
16 come to collaboratives just to complain, with no
17 intention of buying anything.

18 Q. I mean, is that how you view your
19 customer base generally, that people just come and
20 complain and don't really --

21 A. I didn't speak for all, but I do think
22 that there are some, yes.

1 Q. Well, that's an interesting way of
2 looking at your customer base.

3 MR. LIVINGSTON: I move to strike the last
4 comment. That wasn't a question. It was an
5 editorial comment.

6 JUDGE ALBERS: Sustained.

7 MS. FRANCO-FEINBERG: I think Covad has no
8 further cross at this time. Thank you.

9 JUDGE ALBERS: Mr. Schiffman, before you begin,
10 off the record.

11 (Whereupon there was then
12 had an off-the-record
13 discussion.)

14 JUDGE ALBERS: Back on the record.

15 CROSS EXAMINATION

16 BY MR. SCHIFMAN:

17 Q. Mr. Boyer, Ken Schiffman from Sprint.
18 The exhibit that was introduced by Rhythms, Rhythms
19 Rehearing Boyer Cross Exhibit 1, the Project Pronto
20 Product Overview, the presentation that you gave on
21 March 1, 2000, in Dallas, did you give this
22 document to your legal department before you

1 presented it to the CLECs on that day?

2 A. I don't believe so, no.

3 Q. Anybody from your legal department look
4 at this document prior to your presentation?

5 A. Not that I am aware of.

6 Q. In your testimony, I am looking at your
7 rebuttal testimony page 3, you talk about line card
8 collocation as being technically possible. I
9 assume you mean by saying technically possible you
10 have a different meaning there than technically
11 feasible, is that correct?

12 A. Yes.

13 Q. And what's your interpretation of the
14 difference?

15 A. I don't dispute the fact that it's
16 possible to plug in a CLEC line card into an NGDLC
17 system. However, I think that that impact would
18 have such a severe impact on SBC's ability to
19 manage its network that it would call into question
20 whether it's feasible or not.

21 Q. Okay. Mr. Boyer, if a CLEC collocates a
22 DSLAM at a remote terminal and obtains an

1 engineered controlled splice from Ameritech
2 Illinois, that's an option that you are presenting
3 here, correct?

4 A. That would be one option.

5 Q. And the way that a CLEC would be able to
6 get its traffic back to the CO would be over an
7 OC-3, is that correct?

8 A. If that's what they chose. I mean they
9 could buy an OC-3.

10 Q. We could buy an OC-3 from SBC, is that
11 correct?

12 A. You could purchase whatever form of
13 transport from your DSLAM that you could output
14 from that existed.

15 Q. If we purchased transport from Ameritech
16 Illinois, that transport, that fiber, would ride
17 the same fiber that the traffic on the OC-3c that
18 comes out of the back plane of the NGDLC rides to
19 get to the central office, is that correct?

20 A. No, it would be over a different
21 facility.

22 Q. It would be over the same set of fibers

1 that goes from the remote terminal to the central
2 office, right?

3 A. No, I would think it would be over a
4 separate fiber strand, actually.

5 Q. Fiber strand?

6 A. It would be over a separate fiber. I
7 don't think it would be over the same fiber, no.

8 Q. So you have dark fiber available to the
9 CLECs to use for that?

10 A. Where it's available, yes.

11 Q. And the other transport, DS3 transport,
12 is over your fiber, is that correct? We can buy
13 that from you?

14 A. It could be over fiber; it could be over
15 copper.

16 Q. The Commission decided in the Rhythms
17 Arbitration Order that the packing switching
18 criteria were satisfied, did it not?

19 A. That's my understanding.

20 Q. In your testimony have you presented any
21 information that changes what the Commission should
22 consider for whether or not the packet switching

1 criteria are satisfied?

2 A. I am not -- I don't recall. I am not
3 familiar with the logic the Commission applied to
4 make that determination, so I don't know if what I
5 have presented is different or not.

6 Q. Are you aware that SBC argued in the
7 Rhythms Covad arbitration case on rehearing that
8 the packet switching criteria should not be
9 satisfied?

10 MR. LIVINGSTON: Were not satisfied?

11 MR. SCHIFMAN: Were not satisfied, thank you.

12 A. I would agree with that, yes.

13 MR. SCHIFMAN: No further questions.

14 MR. LIVINGSTON: I have a little redirect.

15 JUDGE ALBERS: Off the record.

16 (Whereupon there was then
17 had an off-the-record
18 discussion.)

19 JUDGE ALBERS: Back on the record.

20 REDIRECT EXAMINATION

21 BY MR. LIVINGSTON:

22 Q. I believe it was this morning; it might

1 seem a week ago; but I think this morning there was
2 talk about the cost of collocation at the RT?

3 A. Yes.

4 Q. Do you remember that? And you were
5 asked to assume a cost of \$130,000?

6 A. Yes, I was.

7 Q. Did you make any inquiry over the lunch
8 break regarding the cost of RT collocation?

9 A. Yes, I did.

10 Q. What did you learn?

11 A. I learned that our affiliate SBC telecom
12 actually was in some instances building its own
13 cabinets, its new cabinets, and that the cost in
14 that situation in which it built an entirely new
15 cabinet was approximately \$61,000, and that the
16 cost for an ECS for approximately 200 pairs was
17 estimated to be approximately \$9,000. So in that
18 scenario, if you had the 200 pair ECS and a brand
19 new cabinet which wouldn't eve really be
20 collocation, it would be a brand new cabinet, you
21 would be looking at about \$70,000.

22 Q. About half of what you were asked to

1 assume?

2 A. Yes.

3 Q. And that's for 200 pair?

4 A. That's for a 200 pair, yes.

5 Q. Does the cabinet include the DSLAM?

6 A. It would include the DSLAM.

7 Q. You were asked just a few minutes ago

8 about forecast, non-binding forecast, do you recall

9 that?

10 A. Yes.

11 Q. And you were asked about splitter

12 forecast, do you recall that?

13 A. Yes.

14 Q. Is it your understanding that forecasts

15 for splitters were in fact -- and these are

16 ILEC-owned splitters -- were in fact provided and

17 that the utilization rate has been only five

18 percent of the forecasted amount?

19 A. I am aware of that, yes.

20 MR. LIVINGSTON: I have no further questions.

21 MR. SCHIFMAN: One recross?

22 JUDGE ALBERS: OKAY.

1 REXCROSS EXAMINATION

2 BY MR. SCHIFMAN:

3 Q. That collocation of the DSLAM that you
4 just discussed with your counsel, who did SBC
5 Services obtain that collocation from, what ILEC?

6 A. I got that information from Mr. Welch
7 and Mr. Keown, so they might be able to shed some
8 more light on that.

9 Q. So you don't know where SBC Services
10 collocated that DSLAM?

11 A. Again, you would have to ask Mr. Welch
12 and Mr. Keown.

13 Q. Obviously, it wasn't in an Ameritech
14 territory, is that correct?

15 A. I believe from our conversation over the
16 lunch break, if I recall -- it's been a long day so
17 if I remember this correctly -- that it was in
18 Plano, Texas, but I am not certain.

19 Q. Is that SBC territory?

20 A. No, it's not.

21 Q. Verizon territory?

22 A. GTE, Verizon, yeah.

1 MR. SCHIFMAN: No further questions.

2 MS. FRANCO-FEINBERG: I have just one. I will
3 actually try to keep it at one.

4 RE CROSS EXAMINATION

5 BY MS. FRANCO-FEINBERG:

6 Q. Mr. Boyer, isn't it true that the reason
7 that your splitter capacity apparently is at five
8 percent, if I understood correctly in response to
9 your counsel's question, because SBC multiplied
10 CLECs' projected forecasts by an exponential factor
11 of five when actually deciding port capacity?

12 A. I don't know. I don't know about that
13 one.

14 MS. FRANCO-FEINBERG: Okay.

15 JUDGE ALBERS: Any other recross? All right.
16 Hearing none, this matter is continued to 8:00 a.m.
17 tomorrow morning.

18 (Whereupon the hearing in
19 this matter was continued
20 until July 20, 2001, at 8:00
21 a.m. in Springfield,
22 Illinois.)

1 STATE OF ILLINOIS)
)SS
2 COUNTY OF SANGAMON)
 CASE NO.: 00-0393 On Rehearing
3 TITLE: ILLINOIS BELL TELEPHONE COMPANY

4 CERTIFICATE OF REPORTER

5 We, Cheryl A. Davis and Carla J. Boehl, do
6 hereby certify that we are court reporters
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9 the evidence taken and proceedings had on the
10 hearing on the above-entitled case on the 19th day
11 of July, 2001; that the foregoing pages are a true
12 and correct transcript of our shorthand notes so
13 taken as aforesaid and contain all of the
14 proceedings directed by the Commission or other
15 persons authorized by it to conduct the said
16 hearing to be so stenographically reported.

17 Dated at Springfield, Illinois, on this 20th
18 day of July, A.D., 2001.

19

20

21 Certified Shorthand Reporter

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